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[H.A.S.C. No. 99-32]

# FULL COMMITTEE CONSIDERATION

OF

## H.R. 2419

TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEAR 1986 FOR INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES OF THE UNITED STATES GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM, AND FOR OTHER PURPOSES

## S.J. RES. 108

AUTHORIZING THE SECRETARY OF DEFENSE TO PROVIDE TO THE SOVIET UNION, ON A REIMBURSABLE BASIS, EQUIPMENT AND SERVICES NECESSARY FOR AN IMPROVED UNITED STATES/SOVIET DIRECT COMMUNICATION LINK FOR CRISIS CONTROL

## H.R. 2554

TO LIMIT CONFLICTS OF INTEREST IN DEFENSE PROCUREMENT

## H.R. 2397

TO LIMIT THE PAYMENT OF COSTS TO DEFENSE CONTRACTORS

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# HEARINGS

BEFORE THE

## COMMITTEE ON ARMED SERVICES
## HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

MAY 22; JUNE 6, AND JUNE 13, 1985

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# FULL COMMITTEE CONSIDERATION OF H.R. 2419, S.J. RES. 108, H.R. 2554, AND H.R. 2397

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House of Representatives,
Committee on Armed Services,
*Washington, DC, Wednesday, May 22, 1985.*

The committee met, pursuant to notice, at 10:05 a.m., in room 2118, Rayburn House Office Building, Hon. Les Aspin (chairman) presiding.

## OPENING STATEMENT OF HON. LES ASPIN, A REPRESENTATIVE FROM WISCONSIN, CHAIRMAN, HOUSE COMMITTEE ON ARMED SERVICES

The Chairman. The meeting is called to order. This is a closed meeting. Let me first of all as long as it looks like we are not going to have a vote on the journal, we can get started. We are having a closed hearing, a closed meeting this morning. We do have a reprogramming matter, and we also have an intelligence authorization appropriation matter. And so it is better that we do it in closed session.

Let me give you the agenda for today. You see it on your sheet in front of you. We have to authorize the appropriations for intelligence and intelligence-related activities. We have a reprogramming matter that has created some degree of controversy. Then we have three different matters, two coming out of our subcommittees relating to procurement reform, and one other matter relating to the hot line to discuss this morning.

Mr. Sisisky. Will the chairman yield for a moment?

The Chairman. I yield to the gentleman.

Mr. Sisisky. Will the meeting be open for the markup of these bills? The only reason that I ask is I was asked.

The Chairman. No.

Mr. Sisisky. OK.

The Chairman. I think that it is a lot easier if we do not do that. Let me also mention that our bill, the authorization bill, is scheduled to come to the House floor on June 10. The week of June 10, we will be on the floor the whole week starting June 10. Next week it looks like we are not going to be here at all. And the week after that, we are going to do Nicaragua starting June 3. The week of June 3, we are going to have the supplemental which is a big Nicaragua fight. So we will do our fight starting on the week of June 10.

Mr. Daniel. We should be in good shape by that time.

The **Chairman**. In good shape, but Congress will be ready for us. Everybody will be mad, madder than hornets. OK. Let us start this morning with the bill H.R. 2419.

Who is to talk? Dan Daniel, let me turn the microphone over to you.

## STATEMENT OF HON. DAN DANIEL, A REPRESENTATIVE FROM VIRGINIA

### H.R. 2419

Mr. **Daniel**. Thank you, Mr. Chairman. Each year we join with the Select Committee on Intelligence to approve classified intelligence-related programs in the Department of Defense contained this year in sections 101 and 102 of the bill before the members.

The specifics of the program were approved in our Defense authorization bill for fiscal year 1986, and are detailed in the classified annex to H.R. 2419. Our actions today are based on the sequential referral of the intelligence authorization bill to this committee on classified intelligence-related DOD programs only which is in the nature of a confirmation of action previously taken in the fiscal year 1986 Defense bill.

In other words, all of these matters have been discussed before. And I yield to the gentleman from Arizona, Mr. Stump.

[H.R. 2419 is as follows:]

99TH CONGRESS
1ST SESSION

# H. R. 2419

[Report No. 99-106, Part I]

To authorize appropriations for fiscal year 1986 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 8, 1985

Mr. HAMILTON introduced the following bill; which was referred to the Permanent Select Committee on Intelligence

MAY 15, 1985

Reported with amendments; referred to the Committee on Armed Services for a period ending not later than May 24, 1985, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(c), Rule XI, and ordered to be printed

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# A BILL

To authorize appropriations for fiscal year 1986 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1986".

## TITLE I—INTELLIGENCE ACTIVITIES

### AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1986 for the conduct of the intelligence and intelligence-related activities of the following elements (or offices, agencies or subelements thereof) of the United States Government:

(1) The Central Intelligence Agency.

(2) The Department of Defense.

(3) The Defense Intelligence Agency.

(4) The National Security Agency.

(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(6) The Department of State.

(7) The Department of the Treasury.

(8) The Department of Energy.

(9) The Federal Bureau of Investigation.

(10) The Drug Enforcement Administration.

### CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1986, for the conduct of the intelligence and intelligence-related activities of the elements (or offices, agencies or subelements thereof) listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Permanent Select Committee on Intelligence to accompany H.R. 2419 of the Ninety-ninth Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

### AUTHORIZATION OF APPROPRIATIONS FOR COUNTERTERRORISM ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION

SEC. 103. In addition to the amounts authorized to be appropriated under section 101(9), there is authorized to be appropriated for fiscal year 1986 the sum of $15,200,000 for the conduct of the activities of the Federal Bureau of Investigation to counter terrorism in the United States.

### PERSONNEL CEILING ADJUSTMENTS

SEC. 104. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for the fiscal year 1986 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element (or offices, agencies or subelements thereof) of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

PROHIBITION ON COVERT ASSISTANCE FOR MILITARY OPERATIONS IN NICARAGUA

~~SEC. 105. During fiscal year 1986, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.~~

*"SEC. 105. During fiscal year 1986, no funds available to the Central Intelligence Agency, Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended, directly or indirectly, for material assistance to the Nicaraguan democratic resistance including arms, ammunition, or other equipment or material which could be used to inflict serious bodily harm or death, or which would have the effect of providing arms, ammunition or other weapons of war for military or paramilitary operations in Nicaragua by any group, organization, movement or individual."*

# TITLE II—INTELLIGENCE COMMUNITY STAFF

## AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1986 the sum of $21,900,000.

## AUTHORIZATION OF PERSONNEL END-STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred and thirty-three full-time personnel as of September 30, 1986. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1986, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1986, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

### INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1986, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

## TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

### AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1985 the sum of $101,400,000.

## TITLE IV—PROVISIONS RELATING TO INTELLIGENCE AGENCIES

SEC. 401. (a) Title V of the National Security Act of 1947 (50 U.S.C. 413), relating to accountability for intelligence activities, is amended by adding at the end thereof the following:

### "NOTICE TO CONGRESS OF CERTAIN EXPENDITURES AND CERTAIN TRANSFERS OF DEFENSE ARTICLES

"SEC. 502. (a)(1) Funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

"(A) those funds were specifically authorized by the Congress for use for such activity; or

"(B) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 501 of this Act concerning any significant anticipated intelligence activity, the Director of Central Intelligence has~~,~~ ~~subject to the provisions of section 501,~~ notified the appropriate congressional committees of the intent to make such funds available for such activity; or

"(C) in the case of funds specifically authorized by the Congress for a different activity—

"(i) the activity to be funded is a higher priority intelligence or intelligence-related activity;

"(ii) the need for funds for such activity is based on unforeseen requirements; and

"(iii) the Director of Central Intelligence or the Secretary of Defense has notified the appropriate congressional committees of the intent to make such funds available for such activity.

"(2) ~~Fund~~ *Funds* available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

"(b)(1) The transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of section 501 of this Act.

"(2) Paragraph (1) does not apply if—

"(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

"(B) the transfer—

"(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and

"(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

"(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

"(c) As used in this section—

"(1) the term 'intelligence agency' means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

"(2) the term 'appropriate congressional committees' means the intelligence committees and the Committee on Appropriations of each House;

"(3) the term 'intelligence committees' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate;

"(4) the term 'specifically authorized by the Congress' means that—

"(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

"(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity;

"(5) the terms 'defense articles' and 'defense services' mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

"(6) the term 'transfer' means—

"(A) in the case of defense articles, the transfer of possession of those articles, and

"(B) in the case of defense services, the provision of those services; and

"(7) the term 'value' means—

"(A) in the case of defense articles, the greater of—

"(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

"(ii) the replacement cost; and

"(B) in the case of defense services, the full cost to the Government of providing the services.".

(b) The table of contents at the end of the first section of such Act is amended by inserting the following after the item relating to section 501:

"Sec. 502. Notice to Congress of certain expenditures and certain transfers of defense articles.".

### COUNTERINTELLIGENCE VULNERABILITY REPORT

SEC. 402. (a) The Director of Central Intelligence shall review and evaluate the vulnerability of confidential United States Government activities abroad, and information concerning such activities, to efforts by foreign powers to detect, monitor or counter such activities, or to acquire such information.

(b) Within one hundred and twenty days after the date of enactment of this Act, the Director of Central Intelligence shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a comprehensive report on the matters described in subsection (a), including plans for improvements which are within his authority to effectuate, and recommendations for improvements which are not within his authority to effectuate.

(c) The report described in subsection (b) of this section shall be exempt from any requirement for publication or disclosure.

## TITLE V—GENERAL PROVISIONS

### RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 501. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

### INCREASES IN EMPLOYEE BENEFITS AUTHORIZED BY LAW

SEC. 502. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

99TH CONGRESS
1ST SESSION

# H. R. 2419

[Report No. 99-106, Part I]

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# A BILL

To authorize appropriations for fiscal year 1986 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

---

MAY 15, 1985

Reported with amendments, referred to the Committee on Armed Services for a period ending not later than May 24, 1985, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(c), Rule XI, and ordered to be printed

## STATEMENT OF HON. BOB STUMP, A REPRESENTATIVE FROM ARIZONA

Mr. **Stump**. I thank the gentleman. Mr. Chairman, I concur in what the gentleman from Virginia said and support this bill. If I had had my way, there would have been many more changes. But we did get a very moderate increase over last year's. We were unable to provide funding for the freedom fighters, which I am sure we will fight out as you say in a week or so.

But overall, I think that it is a pretty good bill, and I urge the adoption of it.

Mr. **Daniel**. Mr. Chairman, as far as I know, there is no objection to this. As all the members know, the classified information is available in the committee room for any member who desires to see it. Obviously, we cannot discuss some of it here.

Mr. **Stratton**. Would the gentleman yield to me?

Mr. **Daniel**. Of course, I yield to the gentleman.

Mr. **Stratton**. I think that in previous years most of these items were included in the procurement legislation. And at least the ranking minority member and the chairman of the Procurement Subcommittee were made aware of what the items were. That has not occurred this year.

Is there some change in that arrangement?

Mr. **Daniel**. The chairman will have to respond to that. I do not know, because this is the first year that I have been on the committee.

Mr. **Battista**. No, that has occurred. Earlier in the year, Mr. Stratton, when the Intelligence Committee was going through their markup, they coordinated with the staff over here. We in turn passed those recommendations on to the appropriate subcommittee. In your particular case, it went to Mr. Klein. And I think that some of the nomenclature you would be familiar with if we were in an executive session.

We cannot cover it here, but I think that I can refresh your memory. But it was all coordinated with the appropriate staff member of your subcommittee.

Mr. **Stratton**. Well, I do not want the details. But if Mr. Klein has that information, I would like to get it. I do not think that any effort was made to provide it in contrast to previous years.

Mr. **Daniel**. We will make sure that that is done, Mr. Stratton. Mr. Chairman.

The **Chairman**. Do you move the previous question?

Mr. **Daniel**. I move the previous question.

The **Chairman**. First of all, is there anybody else that has any other questions on this matter or anything?

[No response.]

The **Chairman**. If not, the previous question is ordered.

All in favor of the Daniel motion to approve this bill, say aye.

[A chorus of ayes.]

The **Chairman**. Opposed.

[No response.]

The **Chairman**. The motion is carried.

### S.J. RES. 108

Let us start with S.J. Res. 108.

Is that yours, Lou?

Mr. Finch. Yes.

The Chairman. OK. Lou, why do you not explain the matter which is before us, and then we will go to the two other bills. One is Charlie Bennett's bill, and the other is Bill Nichols' bill, both on procurement reform. But we do have a matter having to do with the Hot Line. Let me turn it over to Lou Finch. Lou.

## STATEMENT OF LOU FINCH, PROFESSIONAL STAFF MEMBER, HOUSE COMMITTEE ON ARMED SERVICES

Mr. Finch. Yes, Mr. Chairman. Thank you very much. Let me say to begin with that I hope that Duffy's Inverse Law does not apply to this, because it is a million dollar reimbursable program which I will go through very quickly.

The origins of this joint resolution are a United States-Soviet agreement that occurred last July to upgrade the hot line that has existed since 1963 between the United States and the Soviet Union that basically involves improving some of the equipment associated with that communications link. The older equipment is rather slow, and it involves transfer of information that only involves textual material.

The agreement that the United States and the Soviet Union signed involves providing the capability of transmitting graphic material, photographs, maps, and that sort of thing. And the point of this is in the time of crisis when you transfer information back and forth when it is absolutely necessary to make sure that it is clear and precise, that this additional type of information would be very helpful and perhaps crucial in being able to resolve things in a peaceful way.

Basically, what the resolution proposes is that the United States provide to the Soviet Union certain pieces of equipment, personal computers, facsimile machines, and that sort of thing which will cost about $1 million. And in return after the transfer of this equipment, the Soviet Union will reimburse us at cost. So it is a fairly straightforward resolution.

The Chairman. Are there any questions about this matter?

[No response.]

Mr. Dickinson. I move the question.

The Chairman. All right. Without objection, it is approved. Thank you.

[S.J. Res. 108 is as follows:]

99TH CONGRESS
1ST SESSION

# S. J. RES. 108

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1985

Referred to the Committee on Armed Services

# JOINT RESOLUTION

Authorizing the Secretary of Defense to provide to the Soviet Union, on a reimbursable basis, equipment and services necessary for an improved United States/Soviet Direct Communication Link for crisis control.

Whereas section 1123(a) of the Department of Defense Authorization Act, 1983 (Public Law 97-252), directed the Secretary of Defense "to conduct a full and complete study and evaluation of possible initiatives for improving the containment and control of the use of nuclear weapons, particularly during crises";

Whereas the Congress directed that the same study should address several specific measures for building confidence between the United States and the Soviet Union, including an improved Direct Communications Link for crisis control;

Whereas the Secretary of Defense responded to that congressional mandate with a report entitled "Report to the Congress on Direct Communications Links and Other Measures to Enhance Stability" in which the Secretary proposed several improvements to existing United States-Soviet mechanisms for the prevention and resolution of crises, including the addition of a facsimile capability to the United States/Soviet Union Direct Communications Link;

Whereas the President of the United States presented the recommendations of the Secretary of Defense to the Government of the Soviet Union in May 1983;

Whereas the United States and the Soviet Union commenced negotiations on bilateral communications improvements in August 1983, and on July 17, 1984, concluded the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade in which the two governments agreed to add a facsimile capability to the Direct Communications Link;

Whereas the Congress endorses that agreement and remains committed to all possible measures to facilitate the resolution of international crises and to limit the danger of conflict;

Whereas the Secretary of Defense is responsible for the installation, maintenance, and operation of the Direct Communications Link equipment for the United States; and

Whereas the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade provides that the United States Government will provide to the Union of Soviet Socialist Republics, at cost, the equipment and services necessary for the Soviet Union part of the improved Direct Communications Link: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of Defense may provide to the Soviet Union, as provided in the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade, concluded on July 17, 1984, such equipment and services as may be necessary to upgrade or maintain the Soviet Union part of the Direct Communications Link agreed to in the Memorandum of Understanding between the United States and the Soviet Union signed June 20, 1963. The Secretary shall provide such equipment and services to the Soviet Union at the cost thereof to the United States.

SEC. 2. (a) The Secretary of Defense may use any funds available to the Department of Defense for the procurement of the equipment and providing the services referred to in the first section.

(b) Funds received from the Soviet Union as payment for such equipment and services shall be credited to the appropriate account of Department of Defense.

Passed the Senate May 16 (legislative day, April 15), 1985.

Attest: JO-ANNE L. COE,
*Secretary.*

The **Chairman**. Charlie, do you want to take your bill up?

## STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE FROM FLORIDA, CHAIRMAN, SEAPOWER AND STRATEGIC AND CRITICAL MATERIALS SUBCOMMITTEE

### H.R. 2554

Mr. **Bennett**. Mr. Chairman, thank you very much, because I was supposed to speak about 10 minutes ago.

The **Chairman**. Oh, all right.

Mr. **Bennett**. Mr. Chairman, the Subcommittee on Seapower and Strategic and Critical Materials by a rollcall vote of 11 to 0 voted on May 15 to report H.R. 2356 which now carries the new number H.R. 2554. You have my entire statement before you. I am kind of briefing it.

The bill would limit the acceptance of compensation from defense contractors for a period of 2 years by former Department of Defense procurement personnel. It would also establish new reporting requirements.

The bill would prohibit anyone with significant responsibility for a defense contract from immediately going to work for the firm involved with that contract.

The bill covers the official's responsibility during the last 2 years of Government employment and bans compensation by the specific firms involved for 2 years following the official's separation from Government service.

The bill identifies the procurement functions covered in the legislation and would require the Department of Defense to identify organizational positions covered by the bill.

The bill would provide that the Office of Government Ethics and the inspector general of the Department of Defense have responsibilities for implementation and review of certain provisions of the bill.

The bill would provide for the following penalties: criminal penalties of not more than $10,000 and/or 1 year imprisonment for individuals who accept compensation or who offer or grant compensation in violation of the bill's limitations, and would provide for a fine of $100,000 or three times the compensation paid to the individual for corporations in violation of the ban.

The subcommittee adopted amendments of a technical nature as well as a substantive amendment offered by Mr. Spence. Mr. Spence's amendment would allow the Secretary of Defense with the concurrence of the Director of the Office of Government Ethics to exempt individuals in certain organizational positions from the provisions of the act, if the Secretary finds that the application of the act would hamper the department.

The bill originally cosponsored by myself, Chairman Nichols, and Congresswoman Boxer attracted over 40 cosponsors. It has been endorsed by the bipartisan Military Reform Caucus and others. The need for the bill has been shown by testimony during the hearings of the subcommittee. The testimony indicated a need to limit the ability of defense contractors to influence or to appear to influence the decisions that might be before us.

H.R. 2554 is a clear improvement over the existing statutes, because it defines limitations in a simple fashion capable of proof, and it includes reporting requirements that would facilitate oversight and enforcement.

Now there are several amendments to this bill. First of all, we will take the one that says amendments to four provisions. These are very technical things that have been brought to our attention.

### Prepared Statement of Hon. Charles E. Bennett

Mr. Chairman, the Subcommittee on Seapower and Strategic and Critical Materials, by a rollcall vote of 11 to 0, voted on May 15, 1985 to report H.R. 2356, "The Department of Defense Conflict of Interest Act of 1985," as amended, to the full committee and to recommend that the full committee report the bill favorably to the House. A clean bill, H.R. 2554, incorporates the subcommittee recommendation.

The bill would limit the acceptance of compensation from defense contractors for a period of two years by former Department of Defense procurement personnel. It would also establish new reporting requirements relating to employment of these individuals by defense contractors.

The bill would prohibit anyone with significant responsibility for a defense contract from immediately going to work for the firm involved with that contract. It would also prohibit a firm with a defense contract from offering an individual who had responsibility for the contract a job, a substantial gift or other compensation, either directly or indirectly.

The bill covers the official's responsibility during the last two years of government employment and bans compensation by the specific firms involved for two years following the official's separation from government service.

The bill identifies the procurement functions covered and would require that the Department of Defense identify the organizational positions covered by the bill. Government officials could seek an advisory opinion from the Office of Government Ethics if there is uncertainty about a job offer. In addition, the bill would require firms with defense contracts over $100,000 to report annually employees hired within the previous two years who had significant government contract responsibilities.

The bill would provide that the Office of Government Ethics and the Inspector General of the Department of Defense have responsibilities for implementation and review of certain provisions of the bill.

The bill would provide for the following penalties: criminal penalties of not more than $10,000 and/or one year imprisonment for individuals who accept compensation or who offer or grant compensation in violation of the bill's limitations; contractual damages to the contractor of $100,000 or three times the compensation paid to the individual in violation of the ban; and, a penalty of $10,000 for a contractor's failure to file the required reports.

The subcommittee adopted amendments of a technical nature as well as a substantive amendment offered by Mr. Spence. Mr. Spence's amendment would allow the Secretary of Defense, with the concurrence of the Director of the Office of Government Ethics, to exempt individuals in certain organizational positions from the provisions of the Act, if the Secretary finds that the application of the Act would hamper the Department of Defense's ability to attract highly qualified individuals to those positions.

The bill, originally cosponsored by myself, Chairman Nichols, and Congresswoman Boxer, attracted more than thirty cosponsors. It has been endorsed by the bi-partisan Military Reform Caucus, chaired by Congressman Mel Levine and Denny Smith and Senators David Pryor and Charles Grassley, and is included in the package of procurement reforms the Caucus is introducing. The need for the bill was shown by testimony during an April 18, 1985 hearing of the Seapower and Investigations Subcommittees. The testimony indicated a need to limit the ability of defense contractors to influence—or appear to influence—the decisions of procurement officials involved with the firm's defense contracts or bids.

There are a number of provisions of current law, that restrict the activities of government personnel after leaving government. Provisions of 18 U.S.C. section 208 prohibit a Federal employee from taking action on any government matters, including contracts, that affect the financial interests of a firm with whom that employee is negotiating or has an agreement for future employment. Under section 207 of Title 18 former government employees are barred "from acting as an agent or attorney in a particular matter involving specific parties in which the United States had an interest and in which the individual had substantially and personally participated while at the agency." Two other Federal statutes, 18 U.S.C. section 281 and 37 U.S.C section 801(c), prohibit former military officers from selling to the Federal Government.

While these statutes provide criminal penalties, they are rarely enforced.

H.R. 2554 is a clear improvement over the existing statutes because it defines limitations in a simple fashion and includes reporting requirements that would facilitate oversight and enforcement.

Mr. Chairman, that completes my report.

[H.R. 2554 is as follows:]

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99TH CONGRESS
1ST SESSION

# H. R. 2554

To limit conflicts of interest in defense procurement.

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IN THE HOUSE OF REPRESENTATIVES

MAY 21, 1985

Mr. BENNETT (for himself, Mr. NICHOLS, Mrs. BOXER, Mr. WHITLEY, Mr. COUGHLIN, Mr. GIBBONS, Mr. PANETTA, Mr. FRANK, Mr. MINETA, Mr. DORGAN of North Dakota, Mr. LEVINE of California, Mr. GEJDENSON, Ms. SNOWE, Mr. PORTER, Mr. DENNY SMITH, Mr. FAUNTROY, Mr. BEILENSON, Mr. HUGHES, Mr. KOLTER, Mr. TORRICELLI, Mr. EDGAR, Mr. COELHO, Mr. MITCHELL, Mr. JACOBS, Ms. KAPTUR, Mr. SOLOMON, Mr. BOUCHER, Mr. STOKES, Mr. EVANS of Illinois, Mrs. BURTON of California, Mr. BEVILL, Mr. AUCOIN, Mr. DOWNEY of New York, Mr. WEISS, Mr. STARK, and Mr. VENTO) introduced the following bill; which was referred to the Committee on Armed Services

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# A BILL

To limit conflicts of interest in defense procurement.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Defense Procurement Conflict of Interest Act".

## SEC. 2. CONFLICT-OF-INTEREST IN DEFENSE PROCUREMENT.

(a) LIMITATIONS ON ACCEPTANCE OF COMPENSATION.—(1) An individual who is a former officer or employee of the Department of Defense or a former or retired member of the Armed Forces who, during the two years preceding the individual's separation from Government service, had significant responsibilities for a procurement function with respect to a Government contractor may not accept compensation from that contractor for a period of two years following the individual's separation from Government service.

(2) Whoever knowingly violates paragraph (1) shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(3) Any individual who knowingly offers, tenders, or grants any compensation to an individual the acceptance of which is or would be in violation of paragraph (1) shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) LIMITATIONS ON CONTRACTORS.—(1) Each contract for procurement of goods or services entered into by the Department of Defense shall include a provision under which the contractor agrees not to provide compensation, during the period described in paragraph (2), to an individual who is a former officer or employee of the Department of Defense or a former or retired member of the Armed Forces who, during the two-year period preceding the individual's separation from Government service, had significant responsibilities for a procurement function with respect to that contractor.

(2) The period referred to in paragraph (1) is the two-year period beginning on the date of the individual's separation from Government service.

(3) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of—

(A) $100,000; or

(B) three times the compensation paid by the contractor to the individual in violation of such contract provision.

(c) REPORTS.—(1)(A) Each contractor subject to a contract term described in subsection (b) shall issue an annual report listing the name of each individual (together with other information adequate for the Government to identify the individual) who is a former Department of Defense officer or employee, or a former or retired member of the Armed Forces, who—

(i) had significant responsibilities for a procurement function during the individual's last two years of Government service;

(ii) was separated from Government service within the previous two years; and

(iii) was provided compensation by that contractor after leaving Government service.

(B) Each such listing shall—

(i) show each agency in which the individual was last employed or served on active duty during the last two years of such individual's service in the Government;

(ii) show the individual's job titles during the last two years of such individual's service in the Government;

(iii) contain a full and complete description of the duties of the individual during the last two years of such service; and

(iv) contain a description of the duties that the individual is performing on behalf of the contractor.

(C) A copy of each such report shall be sent to the Inspector General of the Department of Defense.

(2) The Inspector General of the Department of Defense shall review each report under paragraph (1) to assess the report for accuracy and completeness and for the purpose of identifying possible violations of subsection (a) or (b) or paragraph (1). The Inspector General shall report any such possible violations to the Attorney General for prosecution.

(3) Whoever fails to file a report required by paragraph (1) shall be fined not more than $10,000.

(d) REVIEW BY DIRECTOR OF OFFICE OF GOVERNMENT ETHICS.—The Director of the Office of Government Ethics shall have access to the reports submitted under subsection (c)(1) and shall conduct an annual random survey of the reports to check for violations of subsections (a), (b), and (c)(1). The Director shall submit an annual report to Congress on the operation of this section, including the findings of the Director based on the examination of such reports.

(e) EXCLUSION.—This section does not apply—

(1) to a contract for an amount less than $100,000; or

(2) to employment by an individual with an entity that did not have a Department of Defense contract in excess of $100,000 at the time the individual had significant responsibilities for a significant procurement function with respect to a contract with that entity.

(f) COVERED PROCUREMENT FUNCTIONS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense—

(A) shall identify the procurement functions covered by this section and the organizational positions currently performing such functions; and

(B) shall provide a list of such functions and positions to Congress.

(2) If the Secretary of Defense determines that the duties inherent in an organizational position identified under paragraph (1) involve significant procurement functions with so many contractors that implementation of subsections (a) and (b) with respect to individuals serving in that position would seriously hamper the ability of the Department of Defense to obtain the services of highly qualified individuals in that position, the Secretary, with the concurrence of the Director of the Office of Government Ethics, may exempt individuals serving in such position from the provisions of such subsections by reason of service in such position.

(g) ADVISORY OPINIONS FROM OFFICE OF GOVERNMENT ETHICS.—(1) An individual who is considering the propriety of accepting compensation that might place the individual in violation of subsection (a) may, before acceptance of such compensation, apply to the Director of the Office of Government Ethics for advice on the applicability of this section to the acceptance of such compensation. Any such application shall be made jointly by the individual and the contractor which proposes to provide the compensation.

(2) An application under paragraph (1) shall contain—

(A) a full and complete description of the duties of the applicant during the last two years of the applicant's service in the Government;

(B) any official responsibility the applicant exercised with regard to any procurement contract in which an interest is or was retained by the contractor who proposes to provide such compensation; and

(C) a description by the contractor of any prospective services that the applicant will perform on behalf of the contractor.

(3) Promptly upon receipt of an application under paragraph (1), the Director of the Office of Government Ethics shall publish notice of the application in the Federal Register.

(h) DEFINITIONS.—For purposes of this section:

(1) The term "compensation" includes any payment, gift, benefit, reward, favor, gratuity, or employment valued in excess of $100 at prevailing market price, provided directly, indirectly, or through a third party.

(2) The term "contractor" means any person, partnership, corporation, or agency (other than the Federal Government, the independent agencies thereof, or the District of Columbia) that offers, negotiates, agrees, or otherwise contracts to supply the Department of Defense with goods, services, or supplies. Such term includes any parent, subsidiary, or affiliate thereof.

(3) The term "procurement function", with respect to a contract, means any acquisition action relating to the contract, including negotiating, awarding, administering, approving contract changes, costs analysis, quality assurance, operation and developmental testing, technical advice or recommendation, approval of payment, contractor selection, budgeting, auditing under the contract, or management of the procurement program.

(4) The term "Armed Forces" means the Army, Navy, Air Force, and Marine Corps and includes the Coast Guard when the Coast Guard is operating as a service in the Navy.

(i) SEPARATION OF MEMBERS OF ARMED FORCES.—For the purposes of this section, a member or former member of the Armed Forces shall be considered to have been separated from Government service upon such member's discharge or release from active duty.

(j) TRANSITION.—This section does not—

(1) preclude the continuation of employment that began before the effective date of this section or the receipt of compensation for such employment; or

(2) apply to any officer or employee whose service with the Department of Defense terminated before the effective date of this section.

(k) EFFECTIVE DATE.—This section shall take effect on January 1, 1986.

The CHAIRMAN. Before you start on those, Charlie, if we could. You have some amendments that you want to offer of a technical type.

Mr. BENNETT. Technical.

The CHAIRMAN. Let us make sure that everybody understands what the bill is all about, and fully understands what we are dealing with.

Mr. BENNETT. Well, basically, before he explains it, I think that I can do better than the thing that I read. Which is if you do business with the contractor and you are sitting on the Government side of the table, and you do that in the period of 2 years prior to you going to work for the contractor, then you cannot go to work for that contractor for 2 years. That is the guts of the bill.

It is 2 years before you leave the employment, if you did business with a particular contract. If you did substantial business with that contractor, you cannot turn around and be employed by that same contractor until 2 years have elapsed. That is the guts of the bill.

The CHAIRMAN. OK.

Mr. BENNETT. If he wants to explain it further, that is fine.

The CHAIRMAN. It is attached to Chairman Bennett's statement, if you have his statement before you. The language of the bill is attached to the statement.

Do we have any discussion or questions about the bill?

Mr. BENNETT. Now that is the merits of the bill. We have got amendments.

The CHAIRMAN. Oh, yes, I understand. I want to be sure that everybody here understands what we are dealing with here first.

Mr. BENNETT. The so-called revolving door.

The CHAIRMAN. The revolving door issue.

Mr. DICKINSON. Mr. Chairman.

The CHAIRMAN. Mr. Dickinson.

Mr. DICKINSON. What page is the exact language on, so I know that we are talking about the same thing?

Mr. BENNETT. Well, it is right here, page 4.

Mr. DICKINSON. I understand what we are trying to do, and I agree with the thrust of it. I just want to make sure that I understand the implications of all that was said, if the language is not too broad. For instance, if I might have the gentleman's attention, would this for instance limit a person going to work if he worked with aircraft engines, for instance, we have to do with that, would this limit him or preclude him from going to work with General Electric in some other capacity or in some other division of the company, since they are in the aircraft engine business too?

Mr. BENNETT. Well, I can give you an answer or have the staff, either one.

Mr. DICKINSON. Well, whoever.

Mr. SCHAFER. Mr. Dickinson, it would limit an individual who has a significant responsibility, procurement responsibility, with respect to aircraft engines that were purchased from the General Electric Co. or which had been bid on by the General Electric Co. from going to work for General Electric for a period of 2 years after leaving Government service.

Mr. DICKINSON. In any capacity?

Mr. SCHAFER. In any capacity; yes, sir.

Mr. **Dickinson**. So if they are dealing with the Department of Defense, for instance, this limits what Government employees now?

Mr. **Schafer**. The Government employees are defined as having a significant responsibility with respect to a procurement function. The procurement function is defined quite broadly in the bill to incorporate not only direct contracting officers, but for example—you might want to turn to the definitions page of the bill. It is on page 8 of the bill and starting on line 1.

> The term "procurement function", with respect to a contract, means any acquisition action relating to the contract, including negotiating, awarding, administering, approving contract changes, costs analysis, quality assurance, operation and developmental testing, technical advice or recommendation, approval of payment, contractor selection, budgeting, auditing under the contract, or management of the procurement program.

Mr. **Dickinson**. As broad as that is, that could be just about—this is not limited to DOD, is it?

Mr. **Schafer**. It is limited to DOD.

Mr. **Dickinson**. Just to Department of Defense employees?

Mr. **Schafer**. Yes, sir.

Mr. **Dickinson**. I am trying to see how far down the levels that this would go. Because you have any number of people who are down doing work on budget matters, on numbers and figures, and so forth. So then the substantial phraseology applies.

Mr. **Schafer**. Yes, sir.

Mr. **Dickinson**. As to what is substantial.

Mr. **Schafer**. Substantial responsibility. It is undefined in the bill, sir.

Mr. **Dickinson**. So if that were to be the case then that some third or fourth level guy works on the numbers, let us say, he would be precluded from going to work with a big company such as General Electric, or General Dynamics, or whatever in some division that is totally remote and has nothing to do with what he was dealing with. So there is no casual connection there. It is just saying if you do anything that has a substantial impact on the decisionmaking process for a contract with a company, for 2 years you cannot work for that company in any capacity in any way even though it is not related.

Mr. **Schafer**. Yes, sir.

Mr. **Dickinson**. OK. I think that I understand that. Thank you.

Mr. **Stratton**. Mr. Chairman.

The **Chairman**. Yes, Mr. Stratton.

Mr. **Stratton**. Mr. Chairman, my recollection was that somewhere around the year 1960 that Mr. Hébert himself proposed such a piece of legislation, and public hearings were held on it. I believe that it was the same 2-year ban. And it is my understanding that that is still on the books.

Mr. **Bennett**. Would the gentleman yield?

Mr. **Stratton**. Yes.

Mr. **Bennett**. There is a bill which provides that you have to prove, there is a law that Hébert did support and I think was the author of, that does provide that if you negotiate with the company while you are in that 2-year period to get employment while you are handling contracts on the other side of the table, that you can be indicted and penalized.

The result of that has been only I think one indictment and no conviction. And the reason is that it requires you to prove that the person actually negotiated. Now there is a very hot case right now. Mr. Sawyer, Assistant Secretary of the Navy, went to work for General Dynamics, and he is being tried right now. And he says that he did not negotiate. And the prosecution says, well, you did take a plane, a General Dynamics plane, up there before to their corporate headquarters, what were you talking to them about in that same period of time. So they say that the proof is the contractor and Mr. Sawyer.

I hate to bring personalities into it, and I am not myself a person who dislikes Mr. Sawyer. I think that he is a very high principaled man. But they found it very difficult to prove anything under that statute. With this statute, it is easier to prove.

Mr. STRATTON. How does this bill differ?

Mr. BENNETT. Oh, it differs very definitely. Because it says if you are involved in a substantial way in handling material with a company like General Dynamics during 2 years prior to leaving Government employment, that you have to wait 2 years to be employed by General Dynamics. It does not require intent. It requires a proof.

It is sort of like if you set out to murder somebody, you are guilty of murder because you have intent to murder. But if it is a manslaughter, if you are just driving down the highway and you run into somebody, you are guilty without that intent. You do not have to prove a malicious intent or evil intent.

You just have to prove the fact that you did in fact negotiate that contract in a substantial way that was beneficial to the company, and the company got the benefit of it, that you turned around and went to work for them in 2 years. You are prohibited from doing that.

Mr. SCHAFER. If I might add, Mr. Stratton, current law basically prohibits certain activities as an employee rather than prohibiting subsequent employment. That is a former Government official is prohibited from representing or selling under certain circumstances to the Government, but is not prohibited directly from accepting employment in some other capacity.

Mr. STRATTON. I do not think that that is the legislation that I am referring to. I think that that was something that was developed in the course of the development of the code of ethics in the prior committee. And I think the proposal that Mr. Bennett has offered in spite of what he says, I think that it is absolutely identical with what Mr. Hébert proposed which as I understood became a law.

And if we have had only one conviction in the last 25 years, maybe this will also be observed by no action.

Mr. BENNETT. Well, just because Mr. Stratton does not remember the law like it is does not make it differ. I mean the law is what it is. And we had testimony before our committee, and the testimony showed clearly that the law was as I have stated. The present law, which I think that Mr. Hébert did have something to do with, is a law that requires you to prove that the person negotiates to get employment while he is also representing the Government with that person.

That has been impossible to prove. So therefore, cases have not been brought. This will make it possible. This may not solve all of the problems. If you think that I think that if you pass this law that you are going to get rid of all of the corrupt people in the world and all of the corrupt actions, forget it.

In the first place, it is only a 2-year prohibition. So the day after, 2 years plus 1 day, you can go out and get the job. So it is just a reasonable effort to try to stop such things from happening.

And I can give you a list of such people. It really will turn your stomach. It is really terrible what is happening at the present time. It is just awful. There are not hundreds of cases, but there are thousands of cases where this conflict of interest exists. And we ought to do something to stop it.

Now it is not perfect. Nobody claimed that this is perfect. It just would be better than what we have now. Not only will we have some convictions under it, but more important than that, a lot more important than that is that people will not do it.

Mr. Sawyer is a man of good character. Mr. Sawyer would never have done, in my opinion, something that he thought was violative of criminal law. I know Mr. Sawyer. He is the one that is being sued right now on indictment. As far as his intention of doing something violative, I do not think that he thought that he was doing something violating the law.

But this law says specifically you do this thing in 2 years, you are going to get in trouble if you take that job. It is very specific, it is easy to prove. It is factually clear. And I think that people will not do it. That is much more important than having people indicted and thrown in jail.

I do not want to indict people and throw people in jail. I do not want people to negotiate for the Government on contracts in the case of Mr. Hidalgo and in the case of Mr. Sawyer. It was hundreds and hundreds of millions of dollars, over half a billion that was involved in this. They turned right around and both of them got benefits from the company as soon as they left.

One of them is an Assistant Secretary and the other Secretary of the Navy. I mean if you do not want to close doors like that, I think that there is something wrong with your perception as to what is happening today in our country. You must close these doors. This is a clean-cut clear proposition. It is not unfair in any way.

There are thousands of jobs that these people could otherwise take. They are just precluded from taking a job from a company that they had negotiated on the other side of the table for for a very short period of time, 2 years. That is all it is, 2 years. That is not an unreasonable request. I am biased in favor of it.

The **Chairman**. First Mr. Badham, and then Mr. Sisisky.

Mr. **Badham**. Mr. Chairman, I have really some misgivings with this language in this bill. We in Government now—let me ask a question of counsel first.

Does this apply to Members of Congress?

Mr. **Schafer**. No, sir.

Mr. **Badham**. That is strange. The reason I say that——

Mr. **Bennett**. Applying to Members of Congress, it does not exempt Members of Congress. If a man happened to be in the particular capacity and negotiating for a contract——

Mr. **Badham**. It is my time, Mr. Chairman. The reason that I make that point——

Mr. **Bennett**. Well, you made the point improperly. Because if he were a Member of Congress——

Mr. **Badham**. I have the time, Mr. Chairman.

Mr. **Bennett**. Well, you asked the question. Let me answer it.

The **Chairman**. The gentleman from California has the time.

Mr. **Badham**. Now I make that point, Mr. Chairman, because I think that it is on the face something that no Congress would ever do to itself. Why? I will let anybody answer that who wants when they get the time. But Mr. Chairman, what we are doing with this language is making by implication a statement that creates a crime for somebody who having come into Government for whatever reason to leave that Government and go back to doing what he does best and is trained to do.

You are implying that a person who goes to work for the Defense Department has negotiated for that Department in contracts not in good faith by the very implication of this language.

You are further saying that we are going to cut off one of the greatest accesses that we have to the private sector for expertise of people who go to the Government at reduced salaries in many, many cases. And say that is all right, once they leave they cannot go back to the business they previously had, because they are going to be obviously suspect of doing something for personal gain, not only for 2 years.

Mr. Chairman, the language of this bill says and defines a defense contractor as a person who supplies the Department with goods, services, or supplies, and such term includes any parent, subsidiary, or affiliate thereof.

So in the case brought forth by Mr. Dickinson of a person who left GE to come to work for the Government because the Government needed his expertise perhaps or probably at a reduced salary came to the Department of Defense and say he did as Mr. Dickinson suggested, negotiate terms and contracts for the purpose of aircraft engines. Within 2 years before he left the Department of Defense, he procured aircraft engines, and did such things as budgeted select contracts, auditing, and so forth, and so forth.

Then say he left the Government and went to work for General Electric selling light bulbs. He could be indicted and put in jail, fined $10,000, and have his life and his career ruined for trying to help the Government in the Government process which we notably do not do well.

I think that the intent of this bill is good, but I think that we ought to be very careful about what we are doing, because we try to get people to leave business and come into the Government to help us do what we do not do very well. We are doing something that we would not ask Members of Congress to do when they leave Congress. And this language is so broad that it would stop anybody from going back to a company with whom he negotiated contracts for aircraft engines to go back and help make light bulbs.

Mr. **Stratton**. Would the gentleman yield to me?

**Mr. Badham.** I would be happy to yield.

**Mr. Stratton.** I think that the gentleman is making a very significant point. And I would also call to his attention that the sponsors of this legislation, leaving out the two to three members from our committee, are made up very largely of individuals that very rarely support the legislation that comes out of this committee.

**Mr. Badham.** I thank the gentleman for his contribution. He is entirely correct.

**Mr. Sisisky.** Mr. Chairman.

The **Chairman.** Mr. Sisisky.

**Mr. Sisisky.** I want to make it plain that I am in agreement with the intent of this legislation. If you will look on page 2 of the bill, you would say, "had significant responsibilities for a procurement function with respect to a Government contractor." That is to that Government contractor.

Yes, if he does sell light bulbs for GE, he should not get that job, because you know what can happen even selling light bulbs. That is not my problem with the bill. And I raised the question in the subcommittee and nobody has seemed to have brought it up except Mr. Dickinson, and if, I could be satisfied with that. And that is on page eight in item three.

I raise the question about a lieutenant junior grade on a ship, on an Aegis crusier, doing operational work there. And his service is completed, and he may be a pretty good engineer, but he could not get a job with RCA, because they provided that.

Now if we could find a way. Remember, Bob, I asked you that in subcommittee.

**Mr. Carney.** If the gentleman would yield.

**Mr. Sisisky.** That is the difficulty that I have with that. That could be bookkeepers too.

**Mr. Badham.** Tell me again the point that you are making.

**Mr. Sisisky.** If you would look under item three, line five. It says "operation and developmental testing." You see, I agree with the intent of the bill, any significant contract work. But as you get procurement function, that could be a pretty broad item. Anybody on that ship would be prohibited as I see it in operation.

**Mr. Badham.** Operation and development testing is operational testing, is it not?

**Mr. Schafer.** That is correct. As I understand Mr. Sisisky's concern, if we have an Aegis ship which is still in some kind of testing environment, that there is a crew aboard that ship at the time that it is in testing. The question that he raises is does a lieutenant who is a member of that crew have a significant procurement responsibility with respect to the Aegis contract by virtue of his operational responsibilites on the ship.

My own personal judgment if I had to make that judgment would be that the answer is no. Specifically, the way that the bill would deal with it is that we have the words "significant contractual responsibility" with respect to the contract. We do call out operational and developmental testing as being an area. And we specifically direct the Secretary of Defense to identify the positions associated with those definitions.

Now I would not expect that an individual exercising that judgment of assigning positions would pick a member of the crew of a ship that happens to be going through operational testing.

Mr. SISISKY. Is it true then that Mr. Spence's amendment would take care of that where the Secretary could?

Mr. SCHAFER. In my opinion, Mr. Spence's amendment would not capture that particular example, because the test which Mr. Spence——

Mr. CARNEY. Would the gentleman yield?

The CHAIRMAN. Norm Sisisky has got the time.

Mr. SISISKY. I would yield to the gentleman from New York.

Mr. CARNEY. My friend from Virginia and I serve on the subcommittee, and your concerns were my concerns during subcommittee hearings. And I have an amendment that would focus more on those people who are directly involved. It is a limiting amendment to pay grades and that type of thing. So that lieutenant on a ship is not going to be subject to the constraints of this bill.

I hope at the proper time when I offer it that it will answer many of your questions. As opposed to my friend from South Carolina's amendment which gives the opportunity to exclude certain people because of the difficulties in recruiting people into those jobs that require a great deal of talent.

My amendment deals with that lieutenant (jg.), and I hope at the proper time that it will answer your questions.

Mr. SISISKY. I would yield if my time is not up to the gentleman from South Carolina.

Mr. SPRATT. I thank the gentleman for yielding. I have not seen Mr. Carney's amendment. And the amendment that I am offering was prepared by staff as a perfecting amendment. It seems to me to address the problem that the gentleman from Virginia is raising.

If you will look at page 5, line 17 at the very bottom of the page, there is a section now in the bill which is subparagraph A reading.

> Not later than 180 days after the date of enactment of this Act the Secretary of Defense shall identify the procurement functions covered by this section and the organizational positions currently performing such functions.

The amendment that I would offer substitute in lieu of the present subparagraph A the following subparagraph:

> Shall identify the positions of those officers or employees who have significant responsibilities for a procurement function subject to this Act.

So this would specifically identify those positions, those officers and employees who have significant responsibilities. They would know that they have those responsibilities. They would not be left to judge or interpret whether or not they met this requirement of significant contract responsibility.

Mr. HUNTER. Would the gentleman yield?

The CHAIRMAN. Hold it a second.

Mr. SPRATT. It is not my time.

The CHAIRMAN. Norm Sisisky still has the time.

Mr. HUNTER. Would the gentleman yield for a question?

Mr. BENNETT. I tell you, I find no difficulty with that amendment. But you know, there are four amendments which I as chairman of the committee was going to bring to you. If you are going to bring up amendments, maybe we ought to dispose of the technical amendments, first.

The **Chairman**. All right. This was a technical amendment, and we ought to take care of technical amendments first.

Mr. **Bennett**. I have no objection to that amendment.

The **Chairman**. All right. We will add that to Charlie's technical amendments. Let us talk about the bill itself for a second. Bill.

Mr. **Nichols**. I just want to respond to Mr. Stratton's observation about the cosponsors of the bill. I served with Mr. Bennett on this piece of legislation that he has drafted. I am a cosponsor in it. The bill came about because of a number of allegations that have been brought to our attention about people in responsible contracting jobs, both blue suiters and green suiters, civilians who hang it up one day and go to work in a contracting position with another company the next day, the same company that they have been monitoring.

Now the perception is out here fueled by all sorts of TV shows, and press reports, and so forth that there are a great number of discrepancies in this area. And the sponsors I would respond to my good friend here on the left, we sent out a dear colleague letter. I am certain that Mr. Bennett did not go around the House corraling this one, or that one, or the other one. And the names here are people who came to the committee wanting to be cosponsors of the bill. Thank you, Mr. Chairman.

The **Chairman**. I thank the gentleman from Alabama.

Mr. **Stratton**. Could I respond to the gentleman from Alabama?

The **Chairman**. Mr. Stratton.

Mr. **Stratton**. This was the same matter that came up when I opposed the legislation that Mr. Hébert had sponsored, and I was a very junior member of the committee. When a Navy captain or an Air Force colonel retires, the retirement age may not be a time when his income is adequate to meet the needs of growing children. And where does a Navy captain who has served 20, or 25, or even 30 years in the service go?

Obviously, the only thing that he has to be able to peddle is his expertise in military matters, technical matters. And you are really denying the people who are in the service the opportunity to make a living. And we have already taken steps to reduce the pension that is going to permit them to survive.

And I think that we are imposing on people who are going into the service a serious burden with this kind of legislation.

The **Chairman**. Norm Sisisky.

Mr. **Sisisky**. Just to make a point to my colleague from New York. It says on page 2, line 3. "* * * had significant responsibilities for a procurement function with respect to a Government contractor may not accept compensation from that contractor."

In other words, if he is working, if he is the contract officer for an F-16, he cannot take employment with General Dynamics. But he could go with Northrop Corp., as I read that.

Does anybody argue with that?

Mr. **Bennett**. I agree with that.

Mr. **Sisisky**. It is with that contractor. So his expertise is still available then.

Mr. STRATTON. Well, I think that most contracting officers do not limit themselves to one company. I mean he may be negotiating with General Dynamics on Tuesday, and negotiating with Northrop on Wednesday. And if he gets up to Grumman, that is going to wipe out any other place to go offer his expertise. I think that we are putting them in a very dangerous position.

The CHAIRMAN. Sam, just in response to that. I think that that was the point of the Spence amendment, which I think without the Spence amendment this thing is pretty unworkable. But the Spence amendment, as I understand it, allows somebody who deals with more than one contractor, allows the Secretary to exempt that person.

Am I correct?

Mr. SPENCE. Yes, you are correct. And as a matter of fact on the F-16 you are talking about, that is not just one company right there. Think of all the major companies plus subcontractors involved on a big system like the F-16.

Mr. SCHAFER. Mr. Spence, the bill would not go to subcontractors per se, only to divisions or affiliates of a company, but not to subcontractors.

Mr. SPENCE. I am talking about General Dynamics, for instance, who I guess built the F-16. But what kind of engine do you have in the F-16, that is a Pratt-Whitney engine.

Mr. SCHAFER. That would be a subcontractor. And unless the individual had specific contractual relationships with Pratt-Whitney, he would not be precluded from accepting compensation from Pratt-Whitney.

Mr. SPENCE. Well, I do not know about that.

The CHAIRMAN. Congressman Ray.

Mr. RAY. Mr. Chairman, I realize that you are getting close to a vote, but I would just like to direct this to counsel. Not necessarily to report back now, but maybe to the floor should it become a floor action.

I would like to know whether the germane rule would allow this bill or amendment to be amended to include Members of Congress and members of appropriate committee staffs such as the Intelligence Committee, the Appropriations Committee, and the Armed Services Committee that also are involved in the revolving-door process. And if counsel could just get back at some point on that.

Mr. HOGAN. Mr. Ray, there would be, I think, a germaneness problem. Because the problem of bringing in other committees, Government Operations for example, and the other committees of Congress who have already looked into that. It could raise a significant germaneness problem.

Mr. RAY. So that would have to be in a separate bill. If you would just check it out. Thank you.

The CHAIRMAN. Mr. Daniel.

Mr. DANIEL. Thank you, Mr. Chairman. As all of you know, I have the deepest or the highest—whichever is correct—respect for the author of this bill as well as my colleague, Mr. Nichols. But it just seems to me that we may be rushing into these bills without thorough hearings. I remember so well that a marriage counselor said once, that you never propose to one on a hospital bed.

There is so much euphoria now because of the recent revelations that it just seems to me that both of these bills need to have more discussion and more hearings, because obviously there are a lot of members including this one who does not completely understand what it is that we are talking about. I thank the gentleman.

The CHAIRMAN. Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman. Mr. Chairman, I like this bill and I like the intent of the bill. But I think that there is one problem that we have with this bill, at least that I have. And that is that it is imperative that if you are going to prosecute people for violating the law, they must be on notice.

And there are really two types of notices here. One notice is that particular function that is to be defined later on by the Department of Defense. So presumably, if the Under Secretary of the Navy for Logistics and Shipbuilding is one of the functions that is defined and he is on notice.

But the second tier of notice goes to the individual who has a significant relationship or significant responsibility with regard to a procurement. And I would simply offer to my colleagues a hypothetical where you have a particular Under Secretary, for example, who is asked to sit in on a procurement decision. And he is doing this every day, and some people in the Pentagon are sitting in on a number of decisions every day maybe having some peripheral engagement or entanglement with the particular decision that is being made.

And it would be a sad thing if that gentleman finds 3 years down the line that he is being prosecuted because he happened to be called in by the Secretary of the Navy for a 5-minute discussion back in 1984 with regard to a particular shipbuilding or ship-repair decision.

So I think that we have established that the author for whom I have great respect has established by asking DOD to lay out those functions, so that a person knows if he is an Under Secretary or whatever that he is in the vulnerable position.

I think that he has taken care of that first tier of notice. But I think that the second tier of notice of whether these people who are involved in multiple engagements and at least peripheral contact with a number of procurement decisions every day, whether or not they are really given sufficient notice.

You do not want to have the guy getting a letter from the prosecutor that they have decided to prosecute him because he was in a 15-minute meeting.

But maybe need not be a crucial meeting with regard to a certain contract. And I would ask the author if that is taken care of in this bill?

Mr. BENNETT. Well, yes, On page——

Mr. HUNTER. I did not see it.

Mr. BENNETT. Well, on page 6 of the bill it provides for opinions—advisory opinions—on these matters. So I think that is pretty well taken care of in the bill.

I am ready to discuss the noncontroversial amendment, the improvement amendment.

The CHAIRMAN. Just before—yes.

Mr. **Bennett**. Which I do not think anybody would have any objection to. And then we can get on to the Spence amendment which I do oppose.

The **Chairman**. Well, let me just—I think that the gentleman's concern is taken care of by the Spence amendment, if I am not mistaken.

Mr. **Bennett**. Since it opens the whole bill.

The **Chairman**. The Spence amendment says that anybody who deals with a multiple number of contracts, that position is exempted.

I should not explain the gentleman's amendment, I am just reading, I just read the legislation. And I think the gentleman's concern is taken by the Spence amendment.

Mr. **Hunter**. If I may respond, I think the chairman is right with regard to what I would call the first tier of notice. In other words, the Secretary of Defense could say, hey, the Under Secretary for Shipbuilding and Logistics is concerned with so many contracts that we are going to—and because we want to have good individuals and we want to have talent and attract talent to these positions we are going to exempt this position. What I am saying is if you have a position that is not exempted but you have an individual who—because of the very nature of his job—does a lot of things, and most people in the Pentagon have a number of programs going, you do not want to have a guy who is called in for a 10- or 15-minute meeting——

The **Chairman**. Right.

Mr. **Hunter** [continuing]. Which happens all the time, and he finds out 3 years later he is being prosecuted.

The **Chairman**. That is right. But that would be exempted under this provision.

Mr. **Schafer**. Well, might I suggest that as I understand the construction of the bill, that the bill contemplates that anyone with a significant responsibility, but it then delegates to the Secretary of Defense the authority for defining and identifying those positions that meet the criteria of the law and requires that he basically makes that public. Once he has done that I believe that that defines the positions that fall under the act. And if someone is not occupying one of those positions then they are not subject to the act.

Mr. **Hunter**. I think we are missing the point here. Mr. Chairman, I think it is a crucial point and I think the staff has missed it.

I agree that you have defined this position. You say that the Under Secretary of the Navy for Shipbuilding and Logistics is a position that is not exempt. And the DOD sends that down as one of a list of positions that will be affected by this bill.

My situation is if you have this gentleman who is involved in a number of decisions everyday and let's say he is called in for a 5-minute meeting in which they discuss a contract with Bendix and he participates in this meeting for 5 minutes. Later on 3 years down the line he may get a notice from the prosecutor that because he was in on that so-called crucial meeting for a few minutes he is deemed to have significant, a significant responsibility or have been involved in a significant function of that particular procurement.

So you do not have notice with regard to that second tier.

Mr. HERTEL. Mr. Chairman, if the person had significant responsibility he should be aware of it and come under this act. If he was sitting in a meeting for 5 minutes then he does not have significant responsibility. But if he made the decision in that 5 minutes, if he made the decision then obviously he does have significant responsibility.

Mr. HUNTER. But the point is, Mr. Hertel, that you are dealing with somebody's life and their career. And whether or not it is a judgment call as to whether a person by sitting in on a meeting or doing something else on the periphery of a procurement decision——

Mr. HERTEL. Then it is not significant.

Mr. HUNTER [continuing]. Became significant——

Mr. HERTEL. If you say periphery, you say he just sat in, then it is not significant under this. That is a different word.

Mr. HUNTER. But I would point out to my friend that prosecutors often have a difference of opinion as to what is significant and what is not. And I think to put the gentleman on notice, he has got to know going in, exactly what companies he cannot work for.

Mr. BENNETT. Well, may I address this briefly? I told you on page 6 there is a provision where you can get an opinion on this matter.

Mr. HERTEL. So if he has a question he can ask.

Mr. BENNETT. So he really is not in all that peril.

Furthermore, I want to make the point to you you are making the very point about what this all is about. In other words, if you are dealing with a man who is Assistant Secretary of the Navy and sits on all these things, he is exactly the sort of person who should be precluded.

That is exactly who is being tried today, Mr. Sawyer.

Mr. HUNTER. I am aware of that.

Mr. BENNETT. Because Mr. Sawyer apparently negotiated to try to get a job with General Dynamics when he was settling a $500 millon worth of stuff.

A minute ago we had something about lightbulbs and General Electric. What has that got to do with it? You are overlooking entirely the fact that all you are doing is precluding this man for 2 years after he did this, 2 years he cannot take the job. Well, suppose it is light? Does it have any relevance to it at all?

Mr. Hidalgo, who was Secretary of the Navy, he handled hundreds of millions, if not billions of dollars, in a very complex manner and he came up with a package which he presented and he was paid by General Dynamics after he got out, within 2 years.

Mr. HUNTER. I assure the chairman——

Mr. BENNETT. He is a very fine man.

Mr. HUNTER. I assure the chairman I like the bill.

Mr. BENNETT. And I like the—I have got the time.

I like Mr. Hidalgo. I like Mr. Sawyer. They are personal friends of mine. I like them very much. But what they did is obviously wrong and it should be prohibited. And it is only prohibited for a period of 2 years. That is all there is to it.

Mr. KASICH. Would the gentleman from California yield?

Mr. HUNTER. I would be happy to yield.

Mr. Kasich. Mr. Hunter commented to me about his concern And looking at page 6, Duncan, I think you will find that we do have, in fact, a clearinghouse opportunity in here for people.

And I know there is a lot of strong feeling, not just with the members of the committee, but with the staff that have tried to review this bill. But, you know, one of the staff people told me in the back room just a little bit ago, if we do not move to do something—not just in this area, which says 2 years afterwards you cannot do it—maybe some of it could be a little better defined. And if we do not move to do something in this area and in the area of the Nichols bill, you know what the staff guy told me is there is going to be a backlash against defense in this country that is going to hurt everybody. And that is why I think we have got to go the extra mile.

The Chairman. Before we continue, just a little minute here. It seems to me that the bill that we are talking about does deal with the Hunter problem, I think because it lays out ahead of time what positions we are talking about. And the important thing is to lay this out before the person actually takes the job in DOD. That is the key thing, so that that person knows what he is getting into and what he is restricted by afterwards. I think it is covered, Duncan. I really do. I mean, I think that point is.

I think there is some perfecting language that could be used to improve this bill, but I think with the Spence amendment in it I think that what we have here is a double piece of work.

Mr. Cirincione. If I may add, sir, the Department of Defense has already provided us with a tentative list of the kinds of people they think would be covered by this legislation, including project test and evaluation officers, project managers, guided missile type project officers. I think the Department of Defense seems to have a fairly clear idea of the kinds of people they envision would be covered by this act.

Mr. Carney. Mr. Chairman.

Mr. Bateman. Mr. Chairman.

Mr. Carney. Mr. Chairman. Mr. Chairman.

The Chairman. First Mr. Carney and then Mr. Bateman.

Mr. Carney. Thank you. I think as the chairman of the full committee stated, the Spence amendment takes care of a lot of the problems that we are dealing with. But there is an area that I think has to be addressed, the area that was pointed out by Mr. Sisisky. Certainly the Secretary of Defense is not going to identify some lieutenant (jg.) and get him an exemption. So I am in a position to offer an amendment, Mr. Spratt is in a position to offer an amendment to try to focus——

The Chairman. Deal with that problem.

Mr. Carney [continuing]. These focus in on those problems so the bill will be acceptable to everyone and the bill will be workable.

And I know from talking to Mr. Bennett in subcommittee he does not want to do anything that would affect employment opportunities of people who have been dedicated to our country. He does not want to do anything that would have an adverse effect on the Department of Defense to attract qualified people. That is why the Spence amendment passed in subcommittee.

I think if we can move along and get to the amendments we can get a package here that would be acceptable to all.

Mr. BATEMAN. Mr.——

The CHAIRMAN. Oh, Mr. Bateman?

Mr. DANIEL. Would the gentleman from Virginia yield for just 1 second?

Mr. BATEMAN. Happily.

Mr. DANIEL. Did someone say that they had 85 job descriptions? How many people would fit into those job descriptions? Did somebody say 85,000?

Mr. CIRINCIONE. As part of our discussion, sir, with the Department of Defense, they provided us with a tentative list of people they thought would be covered by this. As you know, the Department of Defense employs some 3.3 million people. They identified——

Mr. DANIEL. Where did the 85,000 come from?

Mr. CIRINCIONE. They identified about 91,000 military and civilian employees who most probably would be in jobs covered by this legislation.

Mr. DANIEL. 91,000.

I thank the gentleman for yielding.

Mr. BATEMAN. Mr. Chairman, if I may, I would like to just make a brief observation and then perhaps pursue some of the concerns that have already been addressed.

The observation is this, that there is an old saying that bad cases make bad law. And the situation with Mr. Sawyer and perhaps others not as well known to me in terms of the circumstances represent bad cases and something that never should have occurred.

My concern is that the bill, as I am best able to understand it and its implications, may be an overreaction.

In particular, I am concerned that we speak in terms of standards of significant responsibilities for a procurement function. And we have defined "procurement function" extremely broadly. We have not defined at all significant responsibilities.

To cure that defect you have said to the Secretary of Defense, give us an inventory of everybody that in your view would come under the description significant responsibilities for a procurement function. And that helps. But it does not really solve the problem, because the way the bill is written anyone, whether or not they are on the list or omitted from the Secretary's list, if someone brings a charge and the finder of fact concludes that they had significant responsibilities, even though their function was not on the Secretary's list, is guilty of a criminal offense.

This is going to have a chilling effect on any potential employer offering anybody who is anywhere close to anything involving procurement, significant responsibilities or otherwise, from offering him that job. Why be at risk of being prosecuted.

I voted for the bill in its markup in the subcommittee because I appreciate and support the intent underlying it. But unless and until we have adopted additional amendments that address the, I think, overbreadth of the bill I am going to have difficulty supporting it in its present form.

The CHAIRMAN. Let me ask about the point that Mr. Bateman raises. Is it true that the—I mean, does the bill only cover those people that are so designated? Or what happens to somebody who is not designated, are they then subject to prosecution?

Mr. Schafer. I think that turns on a very fine point of law that I am not competent to answer, Mr. Aspin. Perhaps we have an attorney——

The Chairman. Is the counsel—hold on a minute. This is an important point.

Mr. Hogan. In my view, Mr. Chairman, I would agree with Mr. Bateman. I think there is a question that even though you can designate a functionary in the department to prepare such a list, if independently somebody should indicate based on—should allege based upon this piece of legislation as it stands that a person did have, in the terms of the bill, this significant participation then you would have a question that had to be litigated, it would seem to me. Now it would be a legitimate defense certainly to say, well, my name was not on the list. But I do not think that the bill itself solves the problem.

Mr. Hunter. Mr. Chairman, can I ask a question of counsel?

The Chairman. Let me say that I think that the gentleman has raised a good point and we ought to clear this up in the legislation.

Mr. Bateman. Could I ask a followup question?

The Chairman. Certainly.

Mr. Bateman. The terms of the bill presently speak only in terms of an undefined phrase, "significant responsibilities". Is there anyone who is concerned that this may even rise to the level of a constitutional defect on the grounds of its vagueness in defining what is a criminal act?

Mr. Hertel. Mr. Chairman.

Mr. Bateman. With the Constitution there is a lot of case law that says you cannot be found guilty of a criminal act if there is not a sufficient degree of specificity as to what constitutes the criminal act.

Mr. Bennett. I would like to address that.

Mr. Hertel. Mr. Chairman.

Mr. Bennett. You are a lawyer and I am a lawyer, too. And there are very good ways of getting definitions. There is lots of case law that probably—just guessing offhand, I would guess there are probably 10,000 cases that would define significant activity of this nature. And that is where you would get it. You would get it by case law.

Mr. Hertel. Would the gentleman yield?

Mr. Bennett. You could do it by, if you want——

Mr. Hertel. Would my friend from Virginia yield?

Mr. Bennett. Just one second. No. I want to finish my thought. I think you could define it if you have better language you want to put in there. You could do it. But you are not lost in a sea of unknowns because they have got plenty of case law to get it.

Mr. Hunter. Would the gentleman yield on that point?

Mr. Bennett. I will yield to the gentleman.

Mr. Hunter. I thank the gentleman.

Mr. Bateman. I have the time.

Mr. Hertel. Would the gentleman yield?

The Chairman. Mr. Bateman has got the time.

The gentleman still has the time.

**Mr. Bateman.** Then I yield first to the gentleman from California.

**Mr. Hunter.** I thank the gentleman for yielding.

I think the gentleman has hit the key point that I was trying to make. And I would just ask counsel, I want to give you a hypothetical meeting. It is between an Under Secretary of the Navy who is by definition one of the functions that is involved with this bill. He is called into a meeting with the Secretary of the Navy. They want to know if the Racer system, which is built in my district by Solar Turbines, can go into the lead ship of the DDG-51. They have a 5-minute meeting.

The question by the Secretary is, "Can DDG-51 accommodate Racer in the first ship?"

This Under Secretary says, "Yes. Racer can easily go into the lead ship and it seems to be an excellent system."

The Secretary of the Navy says, "We will then purchase Racer."

Question: Is that gentleman then precluded from dealing, from having a position with Solar Turbines within 2 years of his termination with the Navy?

**Mr. Hogan.** I am not in a position to define that significant responsibility. And that is what you are asking.

**Mr. Bateman.** Mr. Chairman, let——

**Mr. Hogan.** That is your very question. We do not have a response.

**Mr. Hertel.** Can I ask the gentleman of Virginia to yield on that point?

**Mr. Bateman.** Mr. Chairman, let me before yielding further just suggest that this is the very heart of the matter. Counsel says he cannot even in reaction to that specific hypothetical tell him whether that is significant responsibility. I am not sure anybody on Earth can.

**Mr. Hertel.** Would the gentleman yield?

**Mr. Bateman.** Yes.

**Mr. Hertel.** First of all, thank goodness, under the laws of this country we deal with the reasonable man. So we have reasonable standards. And that is No. 1.

No. 2, the prosecutor in this case and in every case has great latitude. So if it is a close question the prosecutor is not going to bring prosecution. He does not have to.

The third thing is——

**Mr. Bateman.** May I reclaim my time there? I know some prosecutors who do not proceed on that premise. I know some prosecutors who will prosecute anything they can find any basis or excuse for prosecuting.

**Mr. Hertel.** Well, that is not how it works normally.

And finally, let me say that we give the power in this bill to the Department of Defense to draw up all the regulations in this regard, isn't that correct?

**Mr. Schafer.** Yes, sir.

**Mr. Hertel.** So they will make the decisions. The Department of Defense will make the decisions as to who is affected.

I see the gentleman shaking his head no.

**Mr. Bateman.** That is the point that really gets me off on this is that the way the bill is written now it does not exclude prosecution or risk of prosecution just to those who may be on an inventory or a laundry list produced from time to time by the Secretary of Defense. Any aggressive prosecutor, based upon whatever hue and cry, media hype or anything else, that chooses to prosecute the employee or the contractor on a claim that it is a significant responsibility in a procurement function can do so and, conceivably, not withstanding the nonlisting of the function, potentially successfully prosecute.

Mr. **Hertel**. Let's look at that section if I could. On page 8, section 3, "The term 'procurement function,' with respect to a contract, means any acquisition action relating to the contract, including negotiating," and so forth. It is spelled out.

Mr. **Bateman**. Well, I think you will observe that it defines "procurement function," it does not define "significant responsibilities." That is the problem.

Mr. **Schafer**. Mr. Bateman, it would seem to me that at least one aspect of the problem that you raise could be dealt with relatively simply. And that is, if the criteria right at the beginning on limitations on acceptance of compensation included that it, on the individual, that it is an individual occupying a position that has been identified by the Secretary of Defense.

Mr. **Bateman**. I am afraid the point went over my head, which is not difficult to do.

Mr. **Schafer**. I am sorry. There is a basic limitation. It says an individual, right at the beginning of the bill in section 2(a)(1), an individual who meets certain criteria cannot accept certain compensation. All I am suggesting is one of the criteria is that he occupied a position that was on a list that was prepared by the Secretary of Defense.

Mr. **Bateman**. I think an amendment to that effect is the way to get at the problem if you all concede that there is a problem the way the bill is presently drafted.

Mr. **Spratt**. Mr. Chairman.

The **Chairman**. Mr. Spratt.

Mr. **Spratt**. Mr. Bateman raises a valid concern. And I mentioned a minute ago an amendment, a section amendment which staff has prepared and which I have added something to, and I would like to read it to him to see if it addresses the concern in his mind. I do not think we should ask any officers or employees of DOD to draw fine lines or make constructions of this act at their jeopardy on pain of imprisonment and substantial penalty. Nor should they have to run to the general counsel every time they have a question of construction.

The amendment as drawn reads that there shall be prepared—I do not have the preceding language—but it says shall identify the positions of those officers or employees who have significant responsibilities for a procurement function subject to this act.

Someone in DOD would prepare a list identifying positions of those officers or employees who have significant responsibilities for procurement functions subject to this act.

I would suggest we might add to that "and only those positions, officers and employees thus identified shall be affected by the limitations of this act."

Mr. **Bateman**. I think that is a very positive step and probably meets the concern that I have initially identified. Inherent in that——

The **Chairman**. Let me make a suggestion then here to the group. Why don't we try and work out some perfecting language. I do not think we can all do it here talking. But I think it has raised some very, very important issues.

I think the gentleman from California, Mr. Bateman, Mr. Carney, Mr. Sisisky, have raised some very good issues. And I think we ought to—let's work and see what we can do about coming up with some kind of a clarifying amendment along the lines of what Mr. Spratt has suggested in a couple of instances.

Could I suggest that we try and work with the Spratt language. If Mr. Carney would work with Mr. Spratt on his problem and Mr. Bateman work with Mr. Spratt on the question he raised. Check it by Duncan Hunter. Run it by Sisisky and Dennis Hertel and some of these others and see if we cannot come up with a clarifying language for this idea, for this thing.

Let's quit for lunch. Let's come back at 2 o'clock.

Mrs. **Byron**. Mr. Chairman.

The **Chairman**. Yes?

Mrs. **Byron**. May I ask unanimous consent that Mrs. Holt be permitted to insert a statement on the reprogramming?

The **Chairman**. Without objection.

Let's come back at 2 o'clock.

[Whereupon, at 12:48 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.]

### AFTERNOON SESSION

The committee met, pursuant to notice, at 2 p.m., in room 2118, Rayburn House Office Building, Hon. Les Aspin (chairman) presiding.

The **Chairman**. The meeting will come to order. This afternoon we have a bill that is going to be presented by the gentleman from Alabama, Mr. Nichols.

## STATEMENT OF HON. BILL NICHOLS, A REPRESENTATIVE FROM ALABAMA, CHAIRMAN, INVESTIGATIONS SUBCOMMITTEE

### H.R. 2397

Mr. **Nichols**. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, without objection I report H.R. 2397, as amended, which was unanimously approved by the Investigations Subcommittee, a quorum being present, on May 21.

H.R. 2397, the Allowable Cost Reform Act, was developed by the Investigations Subcommittee to address deficiencies in the process for the negotiation of indirect costs submitted by defense contractors. Our recent review of seven defense contractors convinced us that legislation is required in order to correct problems found by the auditors in the negotiation process.

Specifically, Mr. Chairman, and members of the committee, the bill would provide monetary penalties for contractors who submit costs which have been expressly specified as unallowable by statute or regulation. It provides that such costs will be disallowed and the contractor penalized an amount equal to the disallowed cost plus interest, or a minimum penalty of $10,000, whichever is greater.

It further provides that if the cost has been held unallowable by the contractor previously, then the penalty would be twice the amount of the disallowed cost plus interest or $10,000, whichever is greater. This action penalizing the contractor would be appealable under the Contract Disputes Act of 1978.

The bill would make certain costs unallowable. The specific costs include entertainment; lobbying; those incurred in defense of any fraud proceeding; fines and penalties resulting from violation of Federal, State, or local law; membership in social, dining, or country clubs; alcoholic beverages; contributions or donations; advertising designed to promote the contractor or its products; promotional items and memorabilia including models, gifts, and souvenirs.

H.R. 2397 would also place limitations on the costs of corporate aircraft. Generally, those costs would be limited to the amount of a standard commercial fare for travel between the points involved. Exceptions are provided for travel at unreasonable hours; or if commercial means would excessively prolong the travel; would result in increased costs; would not meet physicial or medical needs of the traveler; or if the commercial travel is impracticable and the business nature and necessity of the corporate aircraft are fully documented.

The bill would require the Secretary of Defense to prescribe regulations to establish criteria for the allowability of indirect contractor costs. In developing those criteria, the Secretary shall consider whether reimbursement of such costs is in the best interest of the United States.

The regulations shall define costs which are unallowable and shall provide that costs unallowable under one cost principle shall not be allowable under any other principle. The bill specifies 14 costs which must be clarified including air shows, advertising, recruitment, employee morale and welfare, selling and marketing, travel, public relations, and hotel and meal expenses.

Mr. Chairman, the bill further requires the contractor to submit current accurate and complete documentation in support of its costs at the time a proposal for final settlement is submitted. If the documentation is not sufficient to support the allowability of the cost, then it becomes expressly unallowable.

H.R. 2397 would also require resolution of each cost item questioned as unallowable, unless agreement cannot be reached on the allowability, the contracting officer documents the reason why agreement cannot be reached, and the contractor agrees that costs of that type will not be submitted in the future.

The bill would require also that the defense contract auditor be present at any negotiation or meeting with the contractor whenever feasible and practicable.

Defense contractors would be required to certify that the costs included in their proposal are allowable. This requirement could be waived if the Secretary of Defense or the Secretary of the military department determines the certification would not be in the interest of the United States, and states in writing his reasons for that determination.

Mr. Chairman, this bill would require that contracting officers assigned to a contractor facility be rotated at least every 5 years and would prohibit reassignment of such officer to the same contractor within 5 years of his previous assignment. This requirement could also be waived by the Secretary of Defense and the Secretary of the military department involved.

The bill would apply to all contracts in excess of $25,000 which are flexibly priced and for which price data is required under section 2306(f), title 10, United States Code.

The Secretary of Defense in establishing the rate for payment of indirect costs would be required to base those rates on amounts incurred for direct costs less any amount questioned by a defense contract auditor.

Finally, H.R. 2397 would grant subpoena power to the Secretary of Defense for books, documents, papers, or records of a contractor. The Secretary could delegate that power to officers of the department who are appointed by the President and to the Director of the Defense Contract Audit Agency.

Mr. Chairman, I urge that the committee report H.R. 2397 as amended. And I am prepared to try to respond to any questions or any amendments that might be offered.

[Statement of Mr. Nichols follows:]

### PREPARED STATEMENT OF HON. BILL NICHOLS

Mr. Chairman and members of the committee, without objection I report H.R. 2397, as amended, which was unanimously approved by the Investigations Subcommittee, a quorum being present, on May 21.

H.R. 2397, the Allowable Cost Reform Act, was developed by the Investigations Subcommittee to address deficiencies in the process for the negotiation of indirect costs submitted by defense contractors. Our recent review of seven defense contractors convinced us that legislation is required in order to correct problems found by the auditors in the negotiation process.

The bill would provide monetary penalties for contractors who submit costs which have been expressly specified as unallowable by statute or regulation. It provides that such costs will be disallowed and the contractor penalized an amount equal to the disallowed cost plus interest, or a minimum penalty of $10,000, whichever is greater. It further provides that, if the cost has been held unallowable to the contractor previously, the penalty would be twice the amount of the disallowed cost, plus interest, or $10,000, whichever is greater. This action penalizing the contractor would be appealable under the Contract Disputes Act of 1978.

The bill would make certain costs unallowable. The specific costs include entertainment; lobbying; those incurred in defense of any fraud proceeding; fines and penalties resulting from violation of Federal, State or local law or regulation; membership in social, dining or country clubs or organizations; alcoholic beverages; contributions or donations; advertising designed to promote the contractor or its products; promotional items and memorabilia, including models, gifts and souvenirs.

H.R. 2397 would also place limitations on the costs of corporate aircraft. Generally, those costs would be limited to the amount of a standard commercial fare for travel between the points involved. Exceptions are provided for travel at unreasonable hours; or if commercial means would excessively prolong the travel; would result in increased costs; would not meet physical or medical needs of the traveller; or if commercial travel is impracticable and the business nature and necessity of the corporate aircraft are fully documented.

H.R. 2397 would require the Secretary of Defense to prescribe regulations to establish criteria for the allowability of indirect contractor costs. In developing those criteria the Secretary shall consider whether reimbursement of such costs is in the best interest of the United States. The regulations shall define costs which are unallowable and shall provide that costs unallowable under one cost principle shall not be allowable under any other principle. The bill specifies 14 costs which must be clarified, including air shows, advertising, recruitment, employee morale and welfare, selling and marketing, travel, public relations, and hotel and meal expenses.

Mr. Chairman, the bill further requires the contractor to submit current accurate and complete documentation in support of its costs at the time a proposal for final settlement is submitted. If the documentation is not sufficient to support the allowability of the cost, it becomes expressly unallowable.

H.R. 2397 would also require resolution of each cost item questioned as unallowable, unless (1) agreement cannot be reached on the allowability, (2) the contracting officer documents the reason why agreement cannot be reached, and (3) the contractor agrees that costs of that type will not be submitted in the future.

The bill would require that the defense contract auditor be present at any negotiation or meeting with the contractor whenever feasible and practicable.

Defense contractors would be required to certify that the costs included in their proposal are allowable. This requirement could be waived if the Secretary of Defense or the Secretary of the military department determines the certification would not be in the interest of the United States, and states in writing his reasons for that determination.

Mr. Chairman, the bill would require that contracting officers assigned to a contractor facility be rotated at least every five years and would prohibit reassignment of such officer to the same contractor within five years of his previous assignment. This requirement also could be waived by the Secretary of Defense and the Secretary of the military department involved.

The bill would apply to all contracts in excess of $25,000 which are flexibly priced and for which price data is required under section 2306(f), title 10, United States Code.

The Secretary of Defense, in establishing the rate for payment of indirect costs, would be required to base those rates on amounts incurred for direct costs less any amount questioned by a defense contract auditor.

Finally, H.R. 2397 would grant subpoena power to the Secretary of Defense for books, documents, papers or records of a contractor. The Secretary could delegate the power to officers of the department who are appointed by the President and to the Director of the Defense Contract Audit Agency.

[The complete text of the subcommittee amendment and H.R. 2397 follow:]

NICHOL036

## AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2397 RECOMMENDED BY THE INVESTIGATIONS SUBCOMMITTEE

Strike out all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ``Allowable Cost Reform Act''.

**SEC. 2. ALLOWABLE COSTS.**

(a) REGULATION OF ALLOWABLE COSTS PAYABLE TO DEFENSE CONTRACTORS.--(1) Chapter 137 of title 10, United States Code, is amended by adding at the end thereof the following new section:

**``§2324. Allowable costs under defense contracts**

``(a)(1) The Secretary of Defense shall require that a covered contract provide that if the contractor submits to the Department of Defense a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of an indirect cost that has been expressly specified by statute or regulation as being unallowable--

``(A) that cost shall be disallowed; and

``(B) the contractor shall pay to the United States an amount equal to the greater of $10,000 or--

``(i) the amount of the disallowed cost, plus interest; or

``(ii) if the cost is of a type that has been finally determined, before the submission of such proposal, to be expressly unallowable to that contractor, an amount equal to twice the amount of the disallowed cost, plus interest.

``(2) An action by the Secretary under a contract provision required by paragraph (1) to disallow a cost and to require payment of a contractor--

``(A) shall be considered to be a final decision for purposes of section 6 of the Contracts Dispute Act of 1978 (41 U.S.C. 605); and

``(B) shall be appealable in the manner provided in section 7 of such Act (41 U.S.C. 606).

``(3) Interest under paragraph (1) shall be computed--

``(A) from the date on which the cost is questioned; and

``(B) at the applicable rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1954.

``(b) The following costs are not allowable under a covered contract:

``(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

``(2) Costs incurred to influence (directly or indirectly) congressional action on any legislation or appropriation matters pending before Congress.

``(3) Costs incurred in defense of any fraud proceeding brought by the United States, unless the contractor is found not to be liable in any way for the alleged fraud.

``(4) Fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer.

``(5) Costs of membership in any social, dining, or country club or organization.

``(6) Costs of alcoholic beverages.

``(7) Contributions or donations, regardless of the recipient.

``(8) Costs of advertising designed to promote the contractor or its products.

``(9) Costs of promotional items and memoribilia, including models, gifts, and souvenirs.

``(10) Except as provided in subsection (c), costs for travel by aircraft to the extent that such costs exceed the amount of the standard commercial fare for travel by common carrier between the points involved.

``(c)(1) Subsection (b)(10) does not apply if travel by common carrier at standard fare--

``(A) would require travel at unreasonable hours;

``(B) would excessively prolong travel;

``(C) would result in overall increased costs that would offset potential savings from travel at standard commercial fare; or

``(D) would not meet physical or medical needs of the person traveling.

``(2) Subsection (b)(10) does not apply to travel by aircraft other than a common carrier if--

``(A) travel by such aircraft is specifically required for contract performance or is otherwise specifically authorized under the contract;

``(B) travel by common carrier is impractical; and

``(C) the travel performed is for business purposes and requires the use of such aircraft.

``(3) Costs for air travel in excess of that allowed by subsection (b)(10) may only be allowed by reason of one of the exceptions contained in paragraph (1) or by reason of paragraph (2) if the exception is fully documented and justified, including, in the case of an exception under paragraph (2), full documentation of the use of the aircraft for business purposes.

``(d)(1) The Secretary of Defense shall prescribe regulations to establish criteria for the allowability of indirect contractor costs under Department of Defense contracts. Such regulations shall be prescribed as part of the Department of Defense supplement to the Federal Acquisition Regulation. In developing specific criteria for the allowability of such costs, the Secretary shall consider whether reimbursement of such costs by the United States is in the best interest of the United States. Such regulations--

``(A) shall define in detail and in specific terms those costs that are unallowable under contracts entered into by the Department of Defense; and

``(B) shall provide that specific costs unallowable under one cost principle shall not be allowable under any other cost principle.

``(2) The regulations under paragraph (1) shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

``(A) Air shows.

``(B) Advertising.

``(C) Recruitment.

``(D) Employee morale and welfare.

``(E) Contributions or donations.

``(F) Community relations.

``(G) Dining facilities.

``(H) Professional and consulting services.

``(I) Compensation.

``(J) Selling and marketing.

``(K) Travel.

``(L) Public relations.

``(M) Hotel and meal expenses.

``(N) Membership in civic, community, and professional organizations.

``(3) Such regulations shall specify the circumstances under which clauses (A) and (B) of subsection (c)(1) may be applied.

``(4) Such regulations shall require that a contractor be required to provide current, accurate, and complete documentation to support the allowability of an indirect cost at the time a proposal for final settlement of indirect costs is submitted to the United States. If such documentation is not sufficient to support the allowability of the cost, the cost becomes expressly unallowable and is not subject to negotiation.

``(e)(1) The Secretary of Defense shall require the resolution of each cost which is challenged by the United

States as being unallowable in the contractor's submission for final overhead settlement applied to covered contracts unless--

``(A) the contractor and the contracting officer cannot agree on the allowability of the cost under existing cost principles;

``(B) the contracting officer documents the reasons why an agreement cannot be reached; and

``(C) the contractor agrees that costs of that type will not be submitted to the Department of Defense for payment as an allowable indirect cost in the future.

``(2) The Secretary of Defense shall provide that, whenever feasible and practicable, the defense contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

``(f)(1) A contractor that submits a proposal for final settlement of indirect costs applicable to a covered contract shall be required to certify that all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed by the Secretary of Defense.

``(2) The Secretary of Defense or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the Secretary--

``(A) determines that it would not be in the interest of the United States to require such certification; and

``(B) states in writing the reasons for that determination.

``(g) The Secretary of Defense shall provide that, in establishing the interim or provisional rates for payment of indirect costs to a defense contractor for which final settlement will be made at a later time, such rates shall be based upon amounts incurred by such contractor for indirect costs less any amount questioned by the agency with responsibility for audits of defense contracts.

``(h) In this section, `covered contract' means a contract entered into by the Department of Defense for an amount more than $25,000--

``(1) that is flexibly priced; or

``(2) for which cost or pricing data is required under section 2306(f) of this title.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

``2324. Allowable costs under defense contracts.''.

(b) REGULATIONS.--(1) Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe the regulations required by subsection (d) of section 2423 of title 10, United States Code, as added by subsection (a). Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Act (41 U.S.C. 418b).

(2) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives--

(A) a copy of proposed regulations to be prescribed in accordance with paragraph (1); and

(B) a report identifying--

(i) the nature of the proposed changes that would be made by such proposed regulations to the current cost principles on the allowability of contractor costs; and

(ii) the potential effect of such changes on the allowability of contractor costs.

(c) EFFECTIVE DATE.--Section 2324 of title 10, United States Code, as added by subsection (a), shall apply only to contracts entered into on or after the date on which regulations are prescribed in accordance with subsection (b).

**SEC. 3. SUBPOENAS OF DEFENSE CONTRACTOR RECORDS.**

Section 2313 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

``(d)(1) The Secretary of Defense may require by subpoena the production of any books, documents, papers, or records of a contractor that are needed by the Secretary for the purposes of subsection (a) or the purposes of section 2306(f) of this title.

``(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

``(3) The authority of the Secretary of Defense under this subsection may only be delegated--

``(A) to an officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate; or

``(B) to the director of the defense agency or other element of the Department of Defense that has responsibility for audits of defense contracts.''.

## SEC. 4. LIMITATION ON ASSIGNMENTS OF PRINCIPAL CONTRACTING OFFICERS.

(a) LIMIT ON TOURS OF DUTY AND REASSIGNMENTS.--The Secretary of Defense shall prescribe regulations--

(1) to limit to five years the maximum tour of duty for which an officer or employee under the jurisdiction of the Secretary may be assigned to represent the Department of Defense with a particular contractor as a principal contracting officer; and

(2) to provide that an officer or employee who has held a position as principal contracting officer with a

contractor may not be reassigned to duty with that contractor for a period of five years after the end of the previous such assignment.

(b) WAIVER AUTHORITY.--The Secretary of Defense or the Secretary of the military department concerned may, in an exceptional case, waive the limitation in subsection (a) in the case of any officer or employee if the Secretary--

(1) determines that it would not be in the interest of the United States to apply such limitation in that case; and

(2) states in writing the reasons for that determination.

(c) DEFINITION.--For purposes of this section, the term ``principal contracting officer'' means--

(1) a principal corporate administrative contracting officer or deputy principal corporate administrative contracting officer; and

(2) a principal administrative contracting officer or deputy principal administrative contracting officer.

Amend the title so as to read: ``A bill to amend title 10, United States Code, to limit the payment of costs to defense contractors, and for other purposes.''.

I

99TH CONGRESS
1ST SESSION

# H. R. 2397

To limit the payment of costs to defense contractors.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1985

Mr. NICHOLS (for himself, Mr. BENNETT, and Mr. HOPKINS) introduced the following bill; which was referred to the Committee on Armed Services

# A BILL

To limit the payment of costs to defense contractors.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Allowable Cost Reform Act".

**SEC. 2. ALLOWABLE CONTRACT COSTS.**

(a) PENALTY FOR SUBMISSION OF UNALLOWABLE COSTS.—The Secretary of Defense shall require that a covered contract provide that—

(1) if the contractor submits for reimbursement any cost that has been expressly defined as unallowable by statute or regulation—

(A) the cost shall be disallowed; and

(B) the contractor shall be liable to the United States for an amount equal to the amount of the disallowed cost, plus interest; and

(2) if the contractor submits for reimbursement any cost of a type that has been expressly defined as unallowable by statute or regulation and that has been previously disallowed to that contractor—

(A) the cost shall be disallowed; and

(B) the contractor shall be liable to the United States for an amount equal to twice the amount of the disallowed cost, plus interest.

Interest under this subsection shall be computed from the date on which the request for reimbursement of the cost was submitted and at the applicable rate prescribed by the Secretary of the Treasury under section 611 of the Contract Disputes Act of 1978.

(b) Unallowable Costs.—The following costs shall not be allowed under a covered contract:

(1) Costs of amusement, diversion, and social activities and any costs directly associated with such

costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) congressional action on any legislation or appropriation matters pending before Congress.

(3) Defense of any fraud proceeding brought by the United States, unless the contractor is found not to be liable in any way for the alleged fraud.

(4) Fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, or local laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(5) Costs of membership in any social or dining club or organization.

(6) Alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Advertising designed to promote the contractor or its products.

(9) Models, gifts, souvenirs, or other memoribilia.

(c) REGULATIONS RELATING TO ALLOWABLE COSTS.—(1) Within 120 days after the date of the enactment of this Act, the Secretary of Defense shall publish proposed regulations to amend those provisions of the Department of Defense supplement to the Federal Acquisition Regulation that deal with the allowability of contractor costs reimbursed under Government contracts. In developing specific criteria for the allowability of such costs, the Secretary shall consider whether reimbursement of such costs by the Government is in the best interests of the United States. The amendments—

(A) shall define in detail and in specific terms those costs that are unallowable under contracts entered into by the Department of Defense; and

(B) shall provide that costs specifically unallowable under one cost principle shall not be allowable under related cost principles.

(2) The amendments under paragraph (1) shall at a minimum clarify the cost principles applicable to contractor costs of the following:

(A) Air shows.

(B) Advertising.

(C) Recruitment.

(D) Entertainment.

(E) Employee morale and welfare.

(F) Social and dining clubs or organizations.

(G) Contributions or donations.

(H) Community relations.

(I) Defense of fraud proceedings.

(J) Fines and penalties.

(K) Dining facilities.

(L) Professional and consulting services.

(M) Compensation.

(N) Selling and marketing.

(O) Travel.

(P) Lobbying.

(Q) Public relations.

(R) Hotel and meal expenses.

(S) Membership in civic, community, and professional organizations.

(3) Such amendments shall require that a contractor be required to provide sufficient documentation to support the allowability of a cost at the time cost and pricing data is submitted to the Government pursuant to section 2306 of title 10, United States Code, or at the time a proposed forward pricing agreement or proposal for final settlement is submitted to the Government. If a claim is not supported by adequate documentation, the cost becomes expressly unallowable and is not subject to negotiation.

(4) Within 90 days of the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report identifying—

(A) the nature of the proposed changes to be made to the current cost principles; and

(B) the potential effect of such changes on future requests for reimbursement of contractor costs.

(d) RESOLUTION OF ALLOWABLE EXPENSES.—The Secretary of Defense shall—

(1) require the negotiation and settlement of each item of cost under a covered contract which is challenged by the Government as being unallowable; and

(2) provide that, whenever feasible and practicable, the contract auditor may be present at any negotiation or meeting with the contractor regarding resolution of allowability of costs submitted to the Government for payment.

(e) CERTIFICATION OF ALLOWABLE INDIRECT COSTS.—(1) If a contractor submits a request for reimbursement of indirect costs for final settlement under a covered contract, the contractor shall be required to certify that all indirect costs included in the request are allowable in accordance with the terms of the contract. Any such certification shall be in a form prescribed by the Secretary of Defense.

(2) The Secretary of Defense or the Secretary of the military department concerned may waive the requirement for certification under paragraph (1) in the case of any contract in an exceptional case if the Secretary—

(A) determines that it would not be in the interest of the United States to require such certification; and

(B) states in writing the reasons for that determination.

(f) LIMITATION ON LENGTH OF DUTY ASSIGNMENT FOR CERTAIN CONTRACTING OFFICIALS.—The Secretaries of the military departments and Directors of the Defense Agencies shall prescribe regulations—

(1) to limit to five years the maximum tour of duty for which an officer or employee under the jurisdiction of the Secretary may be assigned to represent the Government with a particular contractor in the decisionmaking position as corporate administrative contracting officer or administrative contracting officer; and

(2) to provide that an officer or employee who has held a position in paragraph (1) may not be reassigned to duty with that contractor for a period of five years after the end of the previous such assignment.

(g) DEFINITION OF COVERED CONTRACT.—For the purposes of this section, the term "covered contract" means a contract with the Department of Defense for an amount more than $25,000—

(1) that is flexibly priced; or

(2) for which cost or pricing data is required under section 2306(f) of title 10, United States Code.

○

Mr. **Bennett**. I would just like to congratulate the chairman of the subcommittee on his fine work on this. He did it very carefully, and the staff did an excellent job. And I think that we have got a good bill. I hope that you all do not nitpick it, and appreciate any support that you can give to it.

Mr. **Nichols**. I thank the gentleman. And let me just say that this is one of the most difficult areas that I have attempted to work since coming to Congress. It has been no pleasure to me to try to work out some sort of legislation which would hopefully put a stop to some of these unreasonable, out of the ballpark charges.

We have gone over the bill time and time again. I want to thank Mr. Bateman in particular for some suggestions that he gave to us for correcting and improving the bill, and which we accepted some 7 out of the 10 that he gave us. Thank you, Mr. Chairman.

The **Chairman**. Are there other questions on the bill? First, Mr. Kasich.

Mr. **Kasich**. Mr. Chairman, I would just like to take a second to commend Mr. Nichols and Mr. Bennett. The main reason, that I would like to commend Mr. Nichols, is that I have been able to work closely with him on this. And I honestly believe that this is a profile in courage to draft this kind of a bill.

And because his name is on it and he is the sponsor of it is what gives it I think great credibility and has an excellent chance of ultimately becoming law.

The **Chairman**. Mr. Bateman.

Mr. **Bateman**. Thank you, Mr. Chairman. I too would like to commend and congratulate Chairman Nichols and Chairman Bennett for the leadership that they have shown and the effectiveness that they have demonstrated in bringing this, I think, very important and necessary piece of legislation to the full committee and hopefully on the way to passage.

I am particularly grateful to Chairman Nichols for his comments regarding several amendments offered by me, of which seven as he mentioned were accepted at the subcommittee level. One of those that I offered which was not accepted at that level has been rewritten to meet what I understood to be the concerns of the subcommittee, and which were very valid concerns.

In its redrafted form, it meets I believe those concerns. It comes at page three of the bill at line nine where the amendment proposes to delete the terminology, "unless the contractor is found not to be liable in any way for the alleged fraud," and inserts in lieu of that, "where the contractor is found liable for fraud or has pleaded nolo contendere to a charge of fraud."

I think there is some undue pride of authorship. The amendment offered is more orthodox statutory language. It states it in the positive rather than a rather convoluted negative. And it meets the situation of eliminating the phrase "in any way" which seems to suggest that the adverse action can be taken even if there is no finding of fraud or plea of nolo contendere. And I do not think that that was what was really intended.

So I would like, Mr. Chairman, to at least determine if the rewritten amendment is acceptable to the chairman, and if I might perhaps with unanimous consent be adopted.

The **Chairman**. Mr. Nichols.

Mr. NICHOLS. If I might respond to the gentleman from Virginia. As I understand the gentleman's amendment, it in no way relieves the contractor in a plea of nolo contendere, which might be assumed that he said I am not going to contest it, but I am really not guilty. He would still be oligated to pay the attorney's charges, his attorney. He would not charge those to the Government.

Mr. BATEMAN. Could not charge them to the Government.

Mr. NICHOLS. That is my understanding. And staff and I have had an opportunity to look at the language, and we are pleased to accept that.

The CHAIRMAN. Thank you. Mr. Hertel.

Mr. HERTEL. Mr. Chairman, I have an amendment to the bill. First of all, I want to commend——

The CHAIRMAN. Let us get the amendment passed out. Can somebody help him pass out the amendment.

Mr. HERTEL. I want to commend Mr. Nichols, and Mr. Bennett, and the subcommittee for all of their work, and I support both of the bills that we are dealing with today that come out of their hard work. All I would like to do is add a criminal penalty. And it would only though occur in the following case under the language of the amendment.

We see that for a first offense if somebody in this long list of things that are to be denied, if somebody tried to have the Government pay for their country club dues. The first time it would not be allowed and they could be fined. If they tried another year in the future for that exact same violation, the country club dues, they would have to pay double the cost or $10,000 in the present bill.

There is no criminal liability though. I maintain that if somebody on the record was denied one of these things that are very specific on the list that they could not charge the Government for, that the second time that they try to do it on that exact same item that they should face criminal charges.

So the amendment would deal with imprisonment for not more than 10 years, a class D felony. And it would also, in addition to the other penalties, allow a $250,000 fine for an individual, and a $500,000 fine in the case of a corporation. But it would only apply after they had been denied once, and tried to put through the very same thing a second time that they have been denied.

Mr. SKELTON. Would the gentleman yield?

Mr. HERTEL. I yield to Mr. Skelton.

Mr. SKELTON. So I understand. If someone puts his country club dues through and gets them paid for, he gets caught, what happens to him then?

Mr. HERTEL. The very first time.

Mr. SKELTON. The first time.

Mr. HERTEL. The first time, they get a fine.

Mr. SKELTON. That is a civil penatly, is that not correct?

Mr. HERTEL. Right.

Mr. SKELTON. That is not a criminal penalty.

Mr. HERTEL. Is not a criminal penalty.

Mr. SKELTON. So 2 years later, this same fellow does it again.

Mr. HERTEL. The very same thing, he does the very same thing, tries to get it authorized. Then criminal penalties could operate.

Mr. SKELTON. All right, but it has to be the same thing.

Mr. HERTEL. It has to be the same thing the second time. Not the second violation, but the same specific thing.

Mr. SKELTON. If the same fellow did a similar thing, and maybe got some other wrong things through, would he be criminally liable for the second item?

Mr. HERTEL. No, similar would not be the same. It has to be the exact same thing that he tries to push through that he has been denied.

Mr. SKELTON. In other words, stepping in the same hole twice.

Mr. HERTEL. Right. And the reason being that, you know, there is so much paperwork obviously in so many contexts and so many places to stick these things in. If somebody has the nerve after they have been told not to try to fool us again with the exact same thing where there is no question involved as to whether it is allowable, that they have been told by the Government that it is not allowable already officially, then a criminal penalty could operate.

Mr. SISISKY. Would the gentleman yield?

Mr. HERTEL. Yes.

Mr. SISISKY. Who is the criminal penalty on?

Mr. HERTEL. It could be on the individual. It would depend on the responsibility. It could be the head of the corporation or the person who actually put it through. The person who had the responsibility.

Mr. SISISKY. Well, do you not think, let us say that it is country club dues, you brought it up. And they have got 10 different locations. And if you make the corporate person responsible, you know, the chairman of the board, I am not trying to nitpick you. I am just trying to say if somebody in another location makes that mistake, you are going to hold the chairman of the board responsible for that.

Mr. HERTEL. Yes, I am, and I will tell you why. Because if he has been told by the Government that he has violated the law the first time for country club dues and he cannot run his company to the extent that somebody else is going to do the same type of violation. I mean the first time that you got in violation of a Government statute, would you not make sure that your entire corporation knew that country club dues was disallowed?

Mr. SISISKY. I would try to make sure, but I am not sure that everybody was listening which was why I was mentioning other locations. Then I would ask another question perhaps to staff if the gentleman will allow me.

Would this have to be referred because of criminal penalties to the Judiciary Committee?

Mr. LALLY. It would, Mr. Sisisky. They could request referral.

Mr. HERTEL. They could request referral. Let me tell the committee that I talked to the chairman and the chairman of the subcommittee regarding crime and jurisdiction, and that they are working on their own package. They are interested in this problem as are many other committees. Obviously, Government Operations already has the right to ask for this bill if they so choose.

But let me point specifically as to what we are doing today. Mr. Bennett's bill which I support does have criminal penalties for the individual within DOD. And some of the gentlemen have raised the point regarding Mr. Bennett's bill of how far that responsibility should go and how low the rank could be.

But in Mr. Bennett's bill there could be a year's imprisonment, the criminal penalty for people who knowingly violate the law. In this case let me add, that it has to be knowingly, too. We have to prove the intent, Mr. Sisisky. The intent would have to be shown in fact the second time that they did do it and meant to do it.

And I think that if we are going to be as tough as we can on these contractors, a fine is not enough. Even doubling the cost of what they tried to get away with is not enough. Because they just take it out of their huge profits. I think that we have to show the public and show those few bad contractors that we are serious about this, and that a criminal penalty is a severe warning.

Mr. **McCloskey**. Would the gentleman yield?

Mr. **Hertel**. Yes.

Mr. **McCloskey**. Mr. Hertel, I share your concern, and I think legislatively and administratively a lot more has to be done in this area. I could be wrong, but I am concerned about cluttering up the books in effect. When I think if we are looking at actual fraudulent intent, as I understand it, from talking with Mr. Lally and other people on the committee, the power is there, and there are all sorts of substantive and degree questions on criminal intent.

Mr. **Hertel**. That is the problem.

Mr. **McCloskey**. I would ask our counsel for an opinion or a suggestion.

Would you agree with me, sir?

Mr. **Lally**. That is correct, Mr. McCloskey. There is currently a false claims section in the criminal code which would cover a false claim filed in the overhead submission. And this was discussed at our subcommittee yesterday, and a penalty section was rejected at that time.

Mr. **Hertel**. What is the penalty for the false claims section?

Mr. **Lally**. It is 5 years or $10,000, I believe, Mr. Hertel.

Mr. **Hertel**. OK. In this one, we talk about up to 10 years. We also talk about a $250,000 fine in the case of an individual, and $500,000 on top of the doubling for trying to put it through.

Ms. **Preston**. The dollar figure has been changed from what is in the statute by the Uniform Criminal Sentencing Act last year, so the dollar figures would be similar to what you have got in here.

Mr. **Hertel**. What are they exactly?

Ms. **Preston**. They would be $250,000 and $500,000.

Mr. **Hertel**. So we are talking about the difference, because Mr. McCloskey raises a good point. And that is that there are other statutes. The difference being though that in this case we pinpointed exactly, and we make it very simple for the Justice Department. We say they were told once and they got a civil fine. But the second time that they try to put the exact same violation through, the exact same one, the company doing the exact same thing, the country club dues or anything else that is in this very tight list that the chairman and the committee has put forward, we say now you are in serious trouble.

It is to the point that after this bill would be enacted into law that anybody who was caught the first time would make darn sure that they never had a second occasion to make the same mistake for any reason whatsoever once again.

Mr. **Nichols**. Mr. Chairman.

The **Chairman**. Mr. Nichols.

Mr. **Nichols**. Let me respond to the gentleman if I might on this particular issue. Let me set the record straight if I can with everybody the way that the provision would be in our bill. This particular section comes about by virtue of the fact that the 14 auditors that we sent out, when they came back and reported to the committee, they did indeed report cases in which a claim had been disallowed one year, and come the next year it was right back in there.

I very definitely agree with the gentleman that there ought to be a penalty for submitting it the first time if it is disallowed, and certainly a heavier penalty if it is disallowed for the second time in a row. We tried to do that.

What we do is first, if the claim is submitted and the auditor throws it out, OK, the contractor has to go back and reimburse the Government for the $100,000 that he has gotten previously which he should not have gotten. Second, he has to pay interest on that $100,000 claim for the time that he has used the money. That is not the current case. Our bill would require that he pay interest on it for the time that he uses that money.

Second, however, he is assessed a fine equal to the amount of the claim. If it is $100,000, he pays the money back, he pays the interest, he pays the $100,000 fine. If the second time in a row this occurs, then that fine is doubled.

I think that that is a pretty substantial penalty. I think that it will get somebody's attention. And for that reason, I would have to object to the amendment of Mr. Hertel. He has talked to me about this on the floor. I understand his intent. But I really think that 10 years in the Federal penitentiary and a half a million dollar fine is a pretty stiff penalty. I think that it is a little further than I would want to go.

Second, I would remind all of you that referral could well take place to Mr. Rodino's committee if this particular criminal penalty were put into the bill. So I hope that the committee in their wisdom may see fit to turn this amendment down.

Mr. **Hertel**. Would the gentleman yield on that?

Mr. **Nichols**. Certainly.

Mr. **Hertel**. I thank the chairman, and I know that we are after the same result. Let me just mention to the committee what the public is upset about. They believe that when people have to pay back with interest that that does not cost them much and that it was worth taking the chance. For $100,000, it is worth taking the chance. And we know how hard it is to catch all these things because of the multiplicity of contracts.

The second time we're talking about doubling the fine again. That's not such a great risk because you're only doubling it, and in the public's mind when that person continues contracts with the Government, the public feels that they're paying their fine or their penalty out of future contracts, or past contracts, and so it doesn't penalize them.

You see, the public's image of the contractor is so very awful because of these stories that they believe that they are just going to add it in the cost someplace else regarding their fine. And I don't think it's bad to say that the second time you do the very same thing after we told you it was wrong that it's possible for you to go to jail, and it's possible for you as an individual or corporation to be heavily fined.

And let me make a last point, and I appreciate the chairman letting me respond, and that is if in the Bennett bill we give a possible prison sentence to the little guy, the average guy, then why shouldn't these big big corporation types also be subject to a prison sentence when they violate the law. Why do we just go after the little guy?

Mr. ORTIZ. Mr. Chairman.

The CHAIRMAN. Mr. Ortiz.

Mr. ORTIZ. My only question would be you say there's something in the statutes now.

Mr. LALLY. Yes, sir.

Mr. ORTIZ. How many times has this statute been used to——

Mr. LALLY. Well, it was most recently used, Mr. Ortiz, to my knowledge, in the General Electric case. True, it was not an overhead submission by General Electric. It was for false records on their labor hours, but it was used in the prosecution of General Electric Corp.

Mr. ORTIZ. Just one time?

Mr. LALLY. Well, that's the most recent. It has been used many times in the past.

Mr. ORTIZ. Thank you.

Mr. HERTEL. Mr. Ortiz, if I could.

Mr. HOPKINS. Mr. Chairman.

Mr. HERTEL. The difference is that in this case it's very specific and easy. They can prosecute it automatically. There's no problem of proof or anything. They were told once that they violated the law and they were denied, and they come back with the very same thing again making the very same attempt. So it's easy for the Justice Department to prosecute. It will be very smooth, very fast, unlike the other problems we had at the Justice Department before.

Mr. HOPKINS. Mr. Chairman.

Mr. SKELTON. Mr. Chairman.

The CHAIRMAN. Mr. Hopkins, then Mr. Skelton.

Mr. HOPKINS. Thank you, Mr. Chairman, two points.

First, the chairman spoke of the penalties being doubled. I think it should be pointed out that there is also now a minimum penalty involved. Take the case where a company comes in and they charge—they want to charge off $105 in parking tickets. So then their fine would be $210. Very nominal, if you will. That was changed yesterday in an amendment offered by Mr. McCloskey, raising that to a minimum of $10,000, which I think was a good amendment. That's the first point I want to make.

The second point is I am in sympathy with Mr. Hertel in his effort to try and invoke criminal penalties. I looked into that earlier; in fact, had the staff working on an amendment. Staff came to me and told me that there were already criminal penalties under title 18. Then the chairman came to me and asked me not to introduce that particular amendment because that it would cause sequential referral to the Judiciary Committee.

In accommodating my chairman and the committee, wanting to get what I consider a good bill, I deferred to that. And I would suggest to Mr. Hertel as one who is sympathetic with his legislation that he consider offering that amendment perhaps at a later time, as I probably will do in an effort to get this onto the floor and not take the risk of it going to the Judiciary Committee, and God knows what those guys will do and how long it will take over there with that group of lawyers.

Mr. HERTEL. If I could ask the gentleman.

Mr. HOPKINS. I'll be glad to yield.

The CHAIRMAN. Go ahead.

Mr. HERTEL. I think the problem is that if we take that same chance with the Bennett bill, which I supported with criminal penalties, because I think you have to have criminal penalties in these areas, then I think we don't look even-handed. I think if we don't fear the benefit of going to Judiciary but say we fear this bill going to Judiciary, it's going to send the wrong message to the public.

And as I pointed out, this penalty would be easier to prosecute than what is already in the law. But I just think it would look very bad for us—let's face it, the people think this is criminal. The public thinks it's criminal. The people in our districts think when the contractors do this it's criminal. Let's make it criminal directly under the law when they try to rip us off the second time in the very same way.

Mr. SKELTON. Mr. Chairman.

The CHAIRMAN. Before we proceed, let me just tell the committee where we are with these two bills.

We are going to try and report these bills out of the committee, but we do not plan to bring them to the floor as separate legislation. I think both Mr. Bennett and Mr. Nichols are looking to offering their bills as amendments to the authorization bill when it's on the floor.

So, therefore, the arguments about whether it gets jointly referred are not really relevant. We could offer an amendment on the floor and bypass that. I think the question about whether there ought to be criminal penalties is much more relevant to the points that Bill Nichols has made.

Don't think about whether it would be a joint referral. We're not worried about that.

Mr. HERTEL. The chairman is saying that we're not worried about a joint referral because we're doing these bills in advance, but these bills are going to move on the authorization bill.

The CHAIRMAN. Exactly.

Mr. HERTEL. So referral to Judiciary wouldn't matter because we're still going to amend the authorization.

The CHAIRMAN. Exactly.

So the issue—what I'm saying to the people here is when you're considering whether we should make it a criminal penalty do not consider whether it would cause a referral to Judiciary. Consider instead the arguments on the merits on whether it should or should not be a criminal penalty, et cetera.

Mr. Skelton and then Mr.——

Mr. **Hopkins**. Mr. Chairman, may I ask you a question on that?

The **Chairman**. Yes, sir.

Mr. **Hopkins**. Are you saying that it makes no difference whether or not that it is referred to the Judiciary Committee? Is that what you're saying?

The **Chairman**. Because when you offer it on the floor as an amendment on the floor you don't have to worry about that. What we're going to do with our bill is offer it as an amendment to the authorization bill on the floor.

If we were to bring it as a separate piece of legislation to the floor then the Judiciary Committee would have the opportunity to ask for joint referral. We're not going to do that.

Mr. **Hopkins**. What if the amendment that Mr. Hertel is offering is adopted to the bill here today? What happens to it?

The **Chairman**. It doesn't matter.

Mr. **Hopkins**. It does not go to Judiciary?

The **Chairman**. No. It might, but we're going to offer it as an amendment to the authorization bill in any case, so it doesn't matter.

The real question is should these be criminal penalties, and I think that the gentleman from Alabama has raised some real issues. What I'm saying is the issue of joint referral is not a real issue. Don't worry about that. Worry about the question about whether it should or should not be.

Mr. **McCloskey**. Mr. Chairman.

The **Chairman**. I had Mr. Skelton first, and then Mr. Bateman.

Mr. **Skelton**. You answered my question, Mr. Chairman.

The **Chairman**. OK, Mr. Batemen.

Mr. **Bateman**. Mr. Chairman, in line with your observation, and addressing the merits of the proposed amendment, I wholeheartedly applaud making a criminal offense for those who have been found guilty of knowingly and willfully making false certification of allowable cost.

The problem that I have is how much law is enough law when you have a title of the code that's been on the books for many, many years, where the penalty is generally comparable, and which adequately meets the very same misconduct you're trying to reach.

I don't approve in principle of a plethora of law on the same subject. One criminal statute reaching the same offense ought to be enough, not two separate criminal statutes defining and making subject to punishment the same offense.

Mr. **Hertel**. Will the gentleman yield?

Mr. **Bateman**. If I could just complete this point then I'd be happy to yield.

The other thing that I find somewhat troubling is under the precise terms of the amendment as I read it, any contractor who twice submits a claim for an item of cost which is unallowable is per se guilty of this offense whether or not the person who signed off as the certifying official under the terms of the act knew that he was again asking for allowance of a cost previously disallowed. Bearing in mind that if you're the Chief Executive Officer of a major defense contractor and you're dealing in hundreds of millions of dollars of allowable cost, or claim for allowable cost, made up of perhaps thousands and thousands of items, it is not impossible for someone to have signed the certificate without having any reason realistically and reasonably to be aware that they will gain submitting an item previously disallowed.

I don't think you can subject individuals to fines of $250,000 and 10 years in jail for doing that unless you can show it was knowingly done or done as a result of willful neglect.

So if we are to do this I think we need knowingly or with willful neglect inserted in the amendment, but even then it's simply duplicating a very clear orthodox and I think frequently used provision of the present title 18, criminal code.

Mr. **Hertel**. The gentleman would yield?

Mr. **Bateman**. Certainly.

Mr. **Hertel**. Well, my learned colleague makes a good point, but it isn't a duplication. It's not a duplication. In fact, it makes it very specific and much easier. We have had a problem with the Justice Department prosecuting, and the other statute that we're talking about is not—is explicit. It also only deals with up to 5 years rather than up to 10 years which is a class D felony in this particular case.

And so I think we make it very clear as we did in the Bennett bill that if you violate this act you do the same thing twice, which I think the corporation should be responsible for when it's the very same violation, that this would be an improvement over the present law and make it much easier for the Justice Department to prosecute, and make it much easier for these contractors to understand the law and understand the penalty because it will be in the same act, and it will be specific to the violation of this act.

Mr. **Bateman**. Mr. Chairman, if I might reclaim my time to briefly respond.

In the Bennett bill, yes; we have made it a crime. What we are defining in that bill a new crime not presently existing under the status of the laws of the United States.

What we are doing here is defining a crime which is already defined by the laws of the United States as being a crime. We don't need to do it twice.

Mr. **Hertel**. No; the law that's on the books now would not say at all—let me make this distinction clear. The present law does not say that if you do something a second time criminal penalties will operate, and it doesn't say if it's the same violation exactly the criminal penalties will operate. The differences is that the prosecution, the Justice Department will have a wide range whether they want to prosecute for this country club a second time, or they wanted to prosecute for this or that a second time. It's not specific to that—to that extent.

But I would say that I would be glad to accept another amendment adding knowingly and with willful intent to improve the amendment.

Mr. **Bateman**. I thank the gentleman, and I think that is a constructive change with reference to the other points just made.

Under present law if you falsely certify one it's a crime. If you falsely certify the same thing twice it's a crime that any sentencing authority is going to take into consideration in determining what the penalty pursuant to the statute should be.

Perhaps there is some political pizazz in having two criminal statutes defined in the same crime, but I don't think basically that's all that we really had.

The one thing that we sitting here in this Congress making the laws can't do is to require prosecuting attorneys to prosecute the cases. And in either event I assume this will be a prosecution by the Department of Justice, and they are no more likely to prosecute under criminal statute A than they are criminal statute B if both equally define the same conduct as being unlawful. And I'll cease and desist.

Mr. **Hertel**. Well, the difference is that in this amendment we say that they shall be fined or imprisoned if they violate this act. In the statute itself presently, you know, there's a lot more leeway.

The gentleman is right. We can never force them to prosecute, but we can have in civil, in white collar crimes, what we do in some blue collar crimes, violent crimes, and street crimes; and that is have what appears to be a mandatory sentence. I think it's an important message for the contractors, and an important message to the public also.

Mr. **Bateman**. If I may, the existing statute for making it a crime to falsely certify to the U.S. Government, if there's a prosecution, if there's a finding of guilt, that statute provides that they shall be fined or imprisoned. It doesn't say you should—if you are prosecuted, and if you are found guilty you may be sentenced, or fined. It says you shall be if you are prosecuted, and if you are found guilty.

Mr. **Hertel**. Can I ask the staff—ask the gentleman from Virginia—if I can ask the staff of some examples where they prosecuted already under the other act for these specific things in this bill?

Mr. **Lally**. For the false overhead claims, Mr. Hertel?

Mr. **Hertel**. Yes.

Mr. **Lally**. I am unaware of any where they were prosecuted for false overhead claims, but the power exists. It's there. A false claim is generally prosecuted.

Mr. **Hertel**. Well, if the committee wants to make it clear to the Justice Department, clear to the public, and clear to the contractors that it's a criminal violation, since they haven't been prosecuting them now under the other act, then I recommend that we put it in this bill, in this act, so that it's very clear that it can be a criminal violation.

All the horror stories from General Dynamics and these other companies, and they haven't made one prosecution yet when they have the power under another statute. This bill amended would make it very clear that it's a criminal violation.

Mr. **Hopkins**. Mr. Hertel, will the gentleman yield?

Mr. **Hertel**. Yes.

Mr. **Hopkins**. Who's got the time, Mr. Chairman?

The **Chairman**. The gentleman from Virginia had the time.

Mr. **Bateman**. Mr. Chairman, I will yield to counsel to continue his request, and then I'll be happy to abdicate to him any further time.

Mr. **Lally**. Thank you, Mr. Bateman.

Mr. **Bateman**. At this point.

Mr. LALLY. I'd like to point out to Mr. Hertel, he cites the General Dynamics examples, but they were disallowed claims, but they were not false claims. The statute requires that the claim be false before it can be prosecuted. That is the distinction between the General Dynamics claims and those in which you discussed in your amendment, Mr. Hertel. These are disallowed claims. These would be for civil purposes but not for criminal purposes.

Mr. HERTEL. Those are disallowed under current regulations. Everything in this bill is currently disallowed under current regulations regarding these claims.

Ms. PRESTON. But the problem, Mr. Hertel, if I might, is in the intepretation of the regulations, the problem that all of the situations that the subcommittee addressed in the audit, were that the regulations were not clear enough; that the actual submission of claims were not under categories that were clearly unallowable, but were in a separate area where they tried to——

Mr. HERTEL. And I would contend that it's not clear enough that it's a criminal violation when you go to the other act. When you put it in this act it will be very clear and since we're not worried about referral to the Judiciary Committee any longer after the chairman's statement, then I don't know why we wouldn't put criminal penalties in this particular act.

Mr. HOPKINS. Will the gentleman yield?

The CHAIRMAN. Who have we got? Who is seeking recognition? First—Mr. Carney has been seeking recognition for some time.

Mr. CARNEY. Thank you, Mr. Chairman. One, if I may ask counsel, is this identified properly at page 2 after line 22?

Mr. LALLY. I suppose it would be as appropriate there as any place, Mr. Carney.

Mr. CARNEY. Maybe I'm looking at the wrong copy. Would that be after——

Mr. LALLY. This is the bill reported from the subcommittee yesterday, Mr. Carney, the one attached to Mr. Nichols' statement.

Ms. PRESTON. It's not the original bill.

Mr. CARNEY. I have the amendment, in the nature of a substitute. Is that——

Mr. LALLY. Yes, sir.

Mr. CARNEY. The one we worked off of yesterday?

Mr. LALLY. Nichols 036, the one that's attached to your statement today.

Mr. CARNEY. OK, that's my problem. My second question——

Mr. LALLY. Recommended by the Investigations Subcommittee is the caption on it, Mr. Carney.

Mr. CARNEY. OK, thank you.

My second question is to the author of the amendment. Just so I clearly understand what we're doing here, if Mr. Jones and General Dynamcs submit golf club dues, Mr. Jones is someone who is in charge of the program up at Electric Boat, and that's disallowed. Two, three years, four years later some young fellow comes out of college and he's working down in Texas building airplanes for General Dynamics and he submits golf club dues, what you're saying is the corporate officers, the CEO of that corporation will be subject to a violation of law penalized by as much as 10 years in jail.

Mr. HERTEL. Responsible parties involved in the second violation.

Mr. CARNEY. Would that be the chief executive officer under that scenario and could he go to jail for 10 years?

Mr. HERTEL. Yes.

Mr. CARNEY. It would make a hell of a press release tonight.

Mr. HOPKINS. Mr. Chairman?

The CHAIRMAN. Mr. Hopkins.

Mr. HOPKINS. In the subcommittee meeting I made this statement, let me get a little bit clearer version of this from the staff.

We already have in the law under title 18 criminal penalties. The staff and the auditors now have identified those people who have submitted claims that are unallowable under the law.

So we have the law, and we identified the people who have broken the law.

Now, do we need to do something else to invoke criminal penalties that has not been done——

Mr. HERTEL. If I could——

Mr. HOPKINS. Just a minute. Wait until I get through with my statement.

I asked that, and the answer, as I recall from the witness at that time was that we had sufficient power to do that.

The point Mr. Hertel is bringing up, which I think is a good point, if we have these things, we know who the people are, and we got the law, why have not these people been penalized more severely? Is it because of what we are doing here? Is it because of the Justice Department? Where does the fault lie? If it's here we need to be doing something about it.

Mr. HERTEL. Could I clarify something with the gentleman?

Mr. HOPKINS. Be delighted to yield.

Mr. HERTEL. I thank you for raising the point. Once we change the statutes and the situation by saying that these are disallowable claims, specifically in law, that is new because the counsel has pointed out that today they are only regulations. Now we're saying they're disallowable in law.

Now, when somebody tries to get away with one of these things in the future they might not come under the false claims because it's not a false claim anymore. It's now defined as a disallowable claim.

So we've changed the status of it in this bid, and, therefore, the other statute might very well not operate, and I contend it would not operate because it won't be a false claim anymore, it will be a disallowable claim that somebody tried to get away with, and under the law the false claim statute is not operating clearly.

Mr. HOPKINS. Could I ask the staff to answer the question then.

Mr. LALLY. If I may, Mr. Hopkins.

Mr. HOPKINS. I wish you would.

Mr. LALLY. The auditors have identified unallowable claims. The claims are not false. They are claims which were submitted under the belief that they complied with the defense acquisition regulations. The auditors disallowed them saying that they did not believe they complied with the regulations. But there was nothing false about the claims. It was not subject to criminal prosecution. To be prosecuted criminally the claim has to be false, the person has to have knowledge of its falsity, and intent to violate the law, and you have to have those three requisites. You would not have them in this situation.

Mr. HOPKINS. Is there any other thing, Mr. Lally, in your view, that this committee should be doing to employ criminal penalties that has not already been done?

Mr. LALLY. I don't believe that anything is necessary, Mr. Hopkins. I believe that section 287 covers it adequately.

Mr. KASICH. Would the gentleman yield on that point?

Mr. HOPKINS. Could the gentleman yield on that point?

Mr. KASICH. For point of clarification—I appreciate the gentleman yielding—Mr. Lally and Mrs. Preston, if both of you could comment, if in Mr. Nichols' bill we specify nine areas where we clearly say "Thou shalt not try to pass these through," if under those provisions because they are right, Dennis, under the current law the submissions they are making are really subject to interpretation—we think they are outrageous, and that's why we're trying to clarify it, but if——

Mr. HERTEL. But if you call these things——

Mr. KASICH. Let me finish. If in what we do in this bill where we outline—clearly outline nine areas where we say "No way," if they are to come in and submit knowingly in those nine areas that we now say are wrong would they be subject to the penalty that's already in the law, because now we make it illegal for them to submit in these nine areas.

Mr. LALLY. No, they would not, Mr. Kasich. It would be something that the auditor could say, "No, it's disallowed. Kick it out." But it would not be a criminal violation.

Mr. HERTEL. So the criminal statute doesn't cover it.

Mr. LALLY. It's because it's not a false claim.

Mr. HERTEL. That's what I was trying to say before.

Mr. LALLY. It has to be false, Mr. Hertel.

Mr. HERTEL. So how can you prosecute a second time? If they do this the first time, and they do it the second time, then you're saying that your statute that you're citing doesn't operate.

Mr. LALLY. That's right. The claim is disallowed. There's no criminal violation.

Mr. HERTEL. So there's no criminal violation you're saying under the current law if this bill passes.

Mr. LALLY. There is a violation under current law regardless of whether this bill passes or not, but if the bill passes you can still prosecute a false claim. But it must be false.

Mr. HERTEL. It must be false.

Well, what if you say—let me go specifically—if the gentleman will give me his time and nail this thing down once and for all.

Mr. HOPKINS. I yield.

Mr. HERTEL. They submit country club dues the first time under this act; it's disallowed. They have to pay interest if they've kept the money for a while and pay the money back.

The do it a second time. The country club dues—they try to submit country club dues again. What happens?

Mr. LALLY. It's disallowed, and the penalty is twice the amount of the—or $10,000, whichever is——

Mr. HERTEL. And you can prosecute criminally?

Mr. LALLY. You could not——

Mr. **Hertel**. You could not prosecute criminally.

Mr. **Lally**. It's not a criminal violation.

Mr. **Bateman**. Would the gentleman yield?

Mr. **Hertel**. It's not a criminal violation. Then it's the opposite of what we've been discussing.

Mr. **Bateman**. Would the gentleman yield?

Mr. **Hopkins**. Let me ask the question of Mr. Hertel. Would your amendment then make it a criminal violation?

Mr. **Hertel**. Yes, it would, for the second offense, the very same offense, it would make it a criminal violation. And I've been saying from the beginning that the current law wouldn't cover it, and now we find in a discussion with the counsel that a first or second violation under this bill would not be allowed for criminal prosecution. There's 20 violations under this bill would not be allowed for criminal violations under the current law.

Mr. **Bateman**. Would the gentleman yield, please?

Mr. **Hopkins**. Be delighted to yield.

Mr. **Bateman**. I think it's been overlooked here that in the bill is a new requirement for a certification of allowable cost, and that certification must be filed. If someone files that certificate, or signs that certificate attesting that the cost attached to it, or allowable when they are specifically, directly, and unambiguously unallowable, then I think it sets the predicate for a prosecution.

Mr. **Hopkins**. A criminal prosecution.

Mr. **Bateman**. Also a certification.

Mr. **Kasich**. Is that true?

Mr. **Lally**. There would be a basis for a false certification, yes.

Mr. **Kasich**. So then if Mr. Hopkins would yield, then, in fact, under the provisions in this law if, in fact, you would submit something in those nine areas, Dennis, and you certify that what you've certified is true, and you are clearly—you clearly know it is not true, and you—whatever that statute is in there—and you would be subject to criminal prosecution.

Mr. **Hertel**. If the gentleman would give me his time, that's the problem. It would be the basis for prosecution. They can't on every single case—would be smaller things or bigger things go ahead and prosecute when they've got to build a case unless we make it as clear as possible. And if we pass my amendment it will be as clear as possible.

It will say the second time you submit the same thing you can be prosecuted criminally, and that's what I think all of us want.

Mr. **Carney**. Can I claim back my time?

Mr. **Hertel**. You give him a fair shot and a warning—Mr. Hopkins has time—give him a fair shot and a warning and then you say if you do the very same thing again you can be prosecuted criminally.

Mr. **Carney**. Would the gentleman from Kentucky yield?

Mr. **Hopkins**. Yes.

Mr. **Carney**. The way the bill is written right now, someone who violates this law that we're writing today the first time is subject to criminal prosecution, not the second, but the first time.

Mr. **Lally**. If it's a false claim.

Mr. **Carney**. And if he's through the certification requirement.

Mr. **Lally**. That's right.

Mr. **Carney**. Is that definition clear, if the gentleman will yield?

Mr. **Lally**. Yes.

Mr. **Carney**. Under that statute does it say certification?

Ms. **Preston**. The statute requires—the bill requires certification. Once the certification is made they are subject to criminal penalties for—it's a false certification. It's not under the false claim.

Mr. **Hertel**. It's not a false claim. It's a false certification.

Mr. **Lally**. No, false certification.

Mr. **Hertel**. And you're saying that in the statute it says covers false certification.

Mr. **Lally**. False statements, yes.

Mr. **Carney**. But they have to certify what they put in as claims are in conformity to this law.

Mr. **Lally**. That's correct.

Mr. **Carney**. So the first time around, Mr. Hertel, it's actually stronger than your amendment. The first time around they'd be subject to criminal penalty.

Mr. **Hertel**. I thank the gentleman for the clarification, but it still is not as clear to the contractors, or to the public, as if we put it in this bill, which is also, by the way, a higher penalty of up to 10 years. It's very clear in the amendment that if you do this the second time you're in violation.

We see from the counsel that it's, you know, totally wide open if they want to prosecute it. Maybe it's the certification that's false. But they probably just say, "Hey, we've been fining them under the act. We're allowed to fine them." Under current law you can argue we're allowed to fine them. You can say we don't need this bill because they violated regulations of the Pentagon. You can say already that the Secretary of the Navy and the Secretary of Defense can stop these charges. You can fine them. You can also stop from doing business with those people in the future under current law, if that's your argument.

If you want to make it tight for criminal prosecution to these violations then put it in the statute.

Mr. **Carney**. I think you and I are trying to accomplish the same thing, Mr. Hertel, but I just wonder if it would be fair to send a guy to jail for 10 years because one of his accountants submitted dues or submitted a bill for a martini that they gave me over at Bullfeathers. Ten years in jail for that. And that might be overkill.

Mr. **Hertel**. That's not true, and you know that from the bill we're talking about a dollar amount in the bill. What's the plateau, $25,000? So don't reduce it to——

Mr. **Carney**. That's the contract. It's the contract that's $25,000. He buys me a martini on a contract over 25 grand he's subject to 10 years in jail if he puts it on a bill twice.

Mr. **Hertel**. That isn't listed in here. Martini isn't listed in here.

Mr. **Carney**. Alcoholic beverages. Yes, it is. Alcoholic beverages.

Mr. **Hertel**. But it's not listed——

Mr. **Carney**. It's listed in the bill, alcoholic beverages.

Mr. **Hertel**. Unless he was certified the first time, he did it once, he did the same thing a second time——

Mr. **Carney**. That's right.

Mr. **Hertel**. If you told him not to do it he shouldn't do it again.

Mr. Carney. So he buys me a martini, puts it in, and goes to jail for 10 years. That to me is overkill. That's all I'm saying.

Mr. Hopkins. Mr. Chairman, I yield back the balance of my time.

The Chairman. Is there anybody else that wants to be heard? The gentleman from Alabama?

Mr. Kramer. Mr. Chairman.

The Chairman. Wait, the gentleman from Alabama.

Mr. Nichols. I want to call for the primary question when everybody has got through talking.

The Chairman. Ken Kramer has been mercifully silent all day. We'll give him a chance to talk. Go ahead.

Mr. Kramer. Is that my mercy or your mercy, Mr. Chairman? Mr. Chairman, first of all I'd ask unanimous consent to be recorded as voting aye on the previous vote taken in the last session on the question of missile loader.

The Chairman. Without objection.

Mr. Kramer. Second, if I might just ask a couple of questions. Mr. Hertel I think has raised a couple of good issues that we probably ought to know the answers to before we vote on this.

First, if I could ask committee staff on page 6, line 15, 16, and 17, when you refer to indirect cost—I haven't studied the bill in depth, but is an indirect cost constitute all those nine items that are listed in the bill?

Mr. Lally. Those, plus many others, Mr. Kramer. All of the costs of the contractor which cannot be applied directly to a particular contract. The corporate executive salaries, legal expenses, accountant expenses, things of this nature.

Mr. Kramer. But it would include the nine items?

Mr. Lally. It would include those nine items.

Mr. Kramer. Second, in the criminal statute that already exists—I don't have that in front of me—is it required that a violation to be constituted has to be committed knowingly——

Mr. Lally. Knowingly.

Mr. Kramer. And with reckless disregard, or what is the standard of——

Mr. Lally. Knowingly is the term used in the section, Mr. Kramer.

Mr. Kramer. What is the definition in that bill roughly speaking of a false claim? How is that defined?

Mr. Lally. I don't believe the claim itself is defined.

Mr. Kramer. Is it for a false claim, or a false statement?

Mr. Lally. Whoever makes or presents to any person or officer, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent shall be fined.

Mr. Kramer. What would be as an intermediate point. What would be wrong with the thinking of—and I understand the potential argument that perhaps this bill does not have enough teeth in it if there is no sanctions applied to it, but I also understand the argument that the bill in its present form is perhaps a little too broad in its coverage to include criminal sanctions for any violations.

What would be wrong of incorporating by reference the provisions that you have just read in this bill saying specifically that those provisions are applicable here? Which means basically that if you knowingly, as I would read it then, if you knowingly, in effect, signed or submitted a certification with knowledge that the certification was indeed false, then that would constitute criminal violation that already is in existence.

Do you see any potential problems with doing that? In other words, we would be clarifying that, in effect, in certain cases where the parties had acted knowingly the provisions of the criminal law would be applicable but would not be setting up, in effect, a dual added system that might make one criminal violation inconsistent with the other, nor make in this particular case perhaps a more broad criminal violation that I get the sense that most of the members of the committee do not want to see happen.

Mr. LALLY. Well, there is no need for it, Mr. Kramer, since the statute already exists, and can be invoked in this situation, or in many others.

Mr. KRAMER. Except for the—I have come across in my own work, and I will try to be mercifully short, that sometimes where you set up a system of violations without referencing specifically other sections, you do leave a significant ambiguity as to whether or not this would be solely a civil matter or would indeed be also a civil and a criminal matter.

Mr. HERTEL. The gentleman raises a good point as to confusion where people would think it's only for a civil remedy in this case because that's all the bill talks to without mentioning any criminal penalties. In the Bennett bill, of course, we have a criminal penalty right in the bill.

I think we should do the same thing for the big contractors that we're trying to do to the DOD personnel. And I think the gentleman does raise a point that if this statute passed with only civil penalties an inference could be drawn that that was what was being asked for by the Congress in law, only civil penalties, unless we put criminal penalties in.

Mr. KRAMER. Is there a good argument that other than the one that you raised that it's, in effect, already an accomplished fact? Is there any other argument really against incorporating that kind of provision by reference?

I think the key here is knowingly. And I do see that Mr. Hertel's original submission doesn't have that in there and I would have a little bit of problem with that.

Mr. LALLY. Well, no more than there is, Mr. Kramer, in the Federal Home Administration statute where you apply for a mortgage, an FHA insured mortgage. If you make a false statement on there you're subject to prosecution.

Mr. KRAMER. It says so right on the certification though.

Mr. LALLY. That's right.

Mr. KRAMER. It does clearly specify that certain sections of the Federal code are applicable when you sign those things.

Mr. LALLY. On the application, but not in the law itself.

Mr. HERTEL. I could accept as a substitute what the gentleman is offering, and that is that we make reference to the statute that somebody could be prosecuted under that, and I'll accept it from both gentlemen as a substitute.

Mr. **Kramer**. Might I ask the chairman of the subcommittee if he sees a problem with that, or has a problem with incorporating that other section?

Mr. **Nichols**. Well, the problem I have with it as a nonlawyer, and I appreciate the knowledge of all of you who have been trained in law school have on this subject, I just simply say it's already in the law. It's—the statute clearly covers that sort of things, and I just think it's superfluous. I think it's not needed, and that's my main objection.

Mr. **Kramer**. The only question that I would have, Bill, in response to what you say is that when the original issue was raised in this committee as to the applicability of the criminal law I think we got—at least initially we got two divergent opinions from the staff as to what the status of this was, if I understood that correctly.

And I—if indeed it is a—maybe there's a good policy reason not to make a knowing violation of this a criminal violation.

Mr. **Hertel**. If Mr. Kramer would yield I think I could clear it up and I've taken a lot of time of the committee.

Mr. Kramer's suggestion Mr. Bateman has written a substitute to mine which would state specifically "whoever knowingly or willfully—with willful neglect," as the gentleman stated earlier, and then when it gets to line 7 of the amendment, "shall be subject to prosecution" under the section that the staff has cited.

Mr. **Bateman**. Pursuant to.

Mr. **Hertel**. Pursuant to the section that the staff cited.

Mr. **Kramer**. Mr. Hertel, the only thing that I would see wrong with that is I think that we're standing—we may be setting up a different standard of culpability there. I think we ought to—if the other one is based on knowingly it seems to me that we probably ought to perhaps use the same standards——

Mr. **Hertel**. I'm using the same language, knowingly. Put that in too.

Mr. **Kramer**. Is that in the other section?

Mr. **Hertel**. Yes.

Mr. **Kramer**. The general section that you mentioned?

Mr. **Lally**. Knowingly.

Mr. **Kramer**. Just knowingly.

Mr. **Lally**. Knowing such claim to be false.

Mr. **Kramer**. I think it would be a lot cleaner if we were going to do something like that if you were to incorporate the whole thing by referencing this. Just specifically say that, you know, in knowing violation——

Mr. **Hertel**. Shall be subject to criminal prosecution under that section.

Mr. **Kramer**. Correct.

Mr. **Hertel**. I'll accept that.

Mr. **Kramer**. There may be some policy reason not to do it, but it doesn't appear to be the case to me.

Mr. **Cofer**. Mr. Kramer, you talk about policy, and I'm not a lawyer, but I do know accounting. If you take Boeing Aircraft, one account came in at one time of $962,334,813. This structure might have come from 15 operating divisions all over the United States and it comes to the controller, or the senior vice president where the package is put together and it may be 15 books like that, and then you're going to say to him you're going to certify that there's not $105 for parking penalties?

Mr. **Hertel.** The second time after he did it once already and got caught for it.

Mr. **Cofer.** I would just say that, you know, as an accountant, a CPA, I would not sign it under any circumstances. I mean, it's not like talking $1,000. This is $962 million. There may be 50,000, or 200,000 transactions.

Mr. **Hertel.** We're putting knowingly in. We're putting knowingly in the language. You have to prove that he knew it and tried to do it a second time. My gosh.

Mr. **Kramer.** This is the problem that I see that I would favor putting the knowingly in there, but others may have a different view.

I think, as I understand the conversation here, we're not sure whether we're making this a criminal—a potential criminal offense or not because there is some resistance as you described as a good reason maybe why you shouldn't do it, but on the other hand other people say that other law is already applicable. And it seems to me that if we're going to pass this bill which I favor, I think it's a good bill, I think we ought to do that. We ought to at least make a clear decision on the part of the committee whether or not we intend this to be a criminal or simply a civil remedy kind of a situation, which I do not think we have done up to this point.

Mr. **Hertel.** Mr. Kramer, if we put in knowingly, and we say it's criminal prosecution subject to the section that the staff has been talking about, then I think we make it fair, and that's Mr. Bateman's suggestion too. I think we're all agreed that—we point out that we're dealing with the current law under this section, and we say knowingly. The second time the guy does it and he knows it then he's subject to criminal prosecution under the current law.

Mr. **Kramer.** With the same penalties, current penalties?

Well, I don't want to belabor this. I don't know. Maybe the chairman of the subcommittee has an idea how important this is. It seems to me that this is fairly critical though that we at least ought to have a clear understanding in our own minds regardless of which direction that we go and whether or not we are incorporating indirectly by reference the other section that will make for criminal violations here; if there is a knowing violation, or we're not doing that, because the way it is now I'm really very unclear as to whether or not we are creating criminal violations. And if I was a contractor, quite frankly, I guess I would at least like to know whether or not we are passing something that might have criminal sanctions in it or not.

Mr. **Nichols.** Let me respond to the gentleman, if I might here, the best I can as a nonlawyer.

Among the provisions of this bill, there was no specific criminal penalty. Absolutely no specific criminal penalty put in it. I was assured by the staff that if there was fraud involved in it that the current law covered that sort of a thing, and they would be duly prosecuted by the Justice Department. The Department of Defense would refer it to the Justice Department, and that there was no provision for that, no real necessity for the sort of amendment.

Now, on that basis, and on the recommendation by the staff, I would have to object to the amendment, and I call for the previous question.

Mr. HERTEL. Could I ask the gentleman just one thing. If the staff says that the current law is operative, then what's the objection of saying that specifically in here as Mr. Bateman's language does? That is, that they are subject to prosecution under the current statute of the law. What's wrong with it?

Mr. NICHOLS. I call for the question.

Ms. PRESTON. Mr. Hertel, if I might clarify. We had testimony on Monday from an attorney here in town who testified representing one of the industry associations, and when he was asked a specific question by Mr. Hopkins about the aspects of the criminal penalty, he made one point and that was that there has never been a case that tests whether or not the submission of a cost—when they submit a cost that's simply a proposal to get reimbursed is, in fact, a claim. And that is part of the reason that we have some confusion as to the applicability of the current law because when they submit these costs for payment they are not, in fact, a claim against the Government.

So there is some question, I think. That is why we have some question in our mind as to the applicability of that, is because of that problem with ascertaining what a claim is.

Mr. HERTEL. I'm totally confused, Mr. Chairman. Now, the staff has told us under current law they can be prosecuted. Now we're hearing that maybe not.

Ms. PRESTON. They told us that they can be prosecuted. I don't think that any one has specifically tested that provision as to indirect cost submissions.

Mr. HERTEL. I stand by my amendment then that this House, and this committee, and the Congress can say that somebody shall be subject to criminal prosecution, and we'll make it very clear to the Justice Department and the Pentagon that if possible to prosecute somebody criminal for committing criminal acts against the people when they do the same thing the second time.

The CHAIRMAN. All right, we'll vote on the matter. All in favor of the Hertel amendment say aye.

Mr. HERTEL. Aye.

The CHAIRMAN. Opposed?

[A chorus of noes.]

The CHAIRMAN. Opinion of the Chair the noes have it.

Ask for a rollcall? Rollcall vote?

All right, we'll have a rollcall.

Mr. WINCUP. Mr. Aspin.

Mr. ASPIN. No.

Mr. WINCUP. Mr. Price.

Mr. PRICE. No.

Mr. WINCUP. Mr. Dickinson.

Mr. DICKINSON. No.

Mr. WINCUP. Mr. Bennett.

Mr. BENNETT. No.

Mr. WINCUP. Mr. Whitehurst.

Mr. WHITEHURST. No.

Mr. WINCUP. Mr. Stratton.

Mr. STRATTON. No.
Mr. WINCUP. Mr. Spence.
Mr. SPENCE. No.
Mr. WINCUP. Mr. Nichols
Mr. NICHOLS. No.
Mr. WINCUP. Mrs. Holt.
[No by proxy.]
Mr. WINCUP. Mr. Daniel.
Mr. DANIEL. No.
Mr. WINCUP. Mr. Hillis.
Mr. HILLIS. No.
Mr. WINCUP. Mr. Montgomery.
[No by proxy.]
Mr. WINCUP. Mr. Badham.
Mr. BADHAM. No.
Mr. WINCUP. Mr. Dellums.
[No response.]
Mr. WINCUP. Mr. Stump.
Mr. STUMP. No.
Mr. WINCUP. Mrs. Schroeder.
Mrs. SCHROEDER. Aye.
Mr. WINCUP. Mr. Courter.
[No by proxy.]
Mr. WINCUP. Mrs. Byron.
Mrs. BYRON. No.
Mr. WINCUP. Mr. Hopkins.
Mr. HOPKINS. Aye.
Mr. WINCUP. Mr. Mavroules.
[No by proxy.]
Mr. WINCUP. Mr. Davis.
[No response.]
Mr. WINCUP. Mr. Hutto.
Mr. HUTTO. No.
Mr. WINCUP. Mr. Kramer.
Mr. KRAMER. Aye.
Mr. WINCUP. Mr. Skelton.
[No by proxy.]
Mr. WINCUP. Mr. Hunter.
[No response.]
Mr. WINCUP. Mr. Leath.
[No response.]
Mr. WINCUP. Mr. Hartnett.
[No response.]
Mr. WINCUP. Mr. McCurdy.
[No by proxy.]
Mr. WINCUP. Mr. Martin.
Mr. MARTIN. No.
Mr. WINCUP. Mr. Foglietta.
[No response.]
Mr. WINCUP. Mr. Kasich.
Mr. KASICH. No.
Mr. WINCUP. Mr. Dyson
[No response.]
Mr. WINCUP. Mr. Carney.

Mr. CARNEY. No.

Mr. WINCUP. Mr. Hertel.

Mr. HERTEL. Aye.

Mr. WINCUP. Mrs. Martin.

[No by proxy.]

Mr. WINCUP. Mrs. Lloyd.

[No response.]

Mr. WINCUP. Mr. Bateman.

Mr. BATEMAN. No.

Mr. WINCUP. Mr. Sisisky.

Mr. SISISKY. No.

Mr. WINCUP. Mr. Sweeney.

Mr. SWEENEY. No.

Mr. WINCUP. Mr. Ray.

Mr. RAY. No.

Mr. WINCUP. Mr. Blaz.

Mr. BLAZ. No.

Mr. WINCUP. Mr. Spratt.

Mr. SPRATT. No.

Mr. WINCUP. Mr. McCloskey.

Mr. MCCLOSKEY. No.

Mr. WINCUP. Mr. Ortiz.

[No by proxy.]

Mr. WINCUP. Mr. Darden.

[No response.]

Mr. WINCUP. Mr. Robinson.

[No by proxy.]

Mr. WINCUP. Mr. Bustamante.

[No response.]

Mr. WINCUP. Mr. Chairman, 4 members affirmative; 33 negative.

The CHAIRMAN. Are there other amendments to the committee bill?

Mr. DANIEL. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Daniel.

Mr. DANIEL. I don't have an amendment, but I'd like to have an explanation.

At the top of page 2 in the gentleman's statement, Mr. Nichols' statement, H.R. 2397 would also place a limitation on the cost of corporate aircraft. Generally those costs would be limited to the amount of the standard commercial fare for travel between points involved. Exceptions provided, and so forth.

Can somebody explain to me what this means?

Mr. NICHOLS. Let me attempt, if I might, Mr. Chairman.

The auditors who came before us again pointed out to us that there was a great deal of company aircraft charge against defense contracts. Rightly so. They used corporate aircraft a great deal.

Mr. Kasich proposed an amendment which, in effect, would say that it's quite all right for corporations to use a corporate jet to go on business trips in connection with military contracts, and to charge for that trip, but that that charge would normally not be more than the regular commercial fare.

Now, let me give you an example of some of the things we're talking about.

General Dynamics, and I don't want to think I'm using them necessarily as a whipping boy, but they had a Gulf Stream II, and they had a Sable Liner. The auditors questioned the billing costs versus the commercial costs on some 40 flights.

For the Gulf Stream plane General Dynamics submitted costs of $1,746,521. It was determined and pointed out by the auditors that this cost exceeded commercial aircraft costs, had it been taken, by some $1,722,000, or about 98.6 percent over than what could have flown by Delta, or Eastern, or so forth.

For the Sable Liner General Dynamics submitted costs of $704,400. Again, it was determined that this cost exceeded what would have been the cost on a commercial air liner by some $680,169.

I point this out to—say to you that obviously when a corporate vice president, or a company engineer, flies from corporate offices to the plant on the west coast he incurs quite a bit of expense in the operation of this corporate plane. And for IRS purposes, of course, that's chargeable as a business expense.

Mr. Kasich thought that while that's fine, that it ought to be limited to what a normal airline ticket would cost.

I amended Mr. Kasich's amendment to provide for such cases as might be involved where a commercial airline couldn't get into a particular plant, and that's the case in some cases in California, in cases where there was an urgent need for that man to get there in 2 hours and he couldn't make it by commercial airline.

We tried to broaden it sufficiently so that if a prevailing case was made that it would be allowed by the auditors.

Mr. Kasich may want to say a little more on that.

Mr. KASICH. Mr. Chairman, there are about five reasons as to when you would be permitted, and the important thing about this is if you have a contract and you're going to execute a contract you have to show in that contract that you would have to travel at unreasonable hours not to comply. That it would result in increased costs in order to not use the corporate plane. That it is, in fact, impractical which relates to what Mr. Nichols said, which is you can't fly from Pomona to San Francisco.

What we're trying to prevent is a defense contractor—remembering that it costs 47 times as much to fly in the corporate plane—that would use the corporate jet that flies from Los Angeles to New York and then charge that off onto the contract when there clearly is a—the availability of commercial travel.

I think we have enough exemptions in here to not be overly restrictive, and, second, we certainly don't try to impact on any IRS regulations as it relates to the use of the plane.

So I think it's a responsible proposal. We'll save money, and it's supported by those people who actually worked on this audit, including Will and the gentleman who was the auditor and said that they thought it was a reasonable approach.

Mr. MARTIN. Will the gentleman yield to me?

Mr. DANIEL. Mr. Chairman, I have the time now.

Mr. KASICH. Yes, I yield to the gentleman.

Mr. MARTIN. Mr. Kasich yield to me. I just wanted to make sure if counsel listens that I understand this.

Let's take the situation where a company engaged in contracting with the Defense Department charges against the contract and submits a claim as described in here for private jet or whatever. And the determination is made that certainly it was more expensive than what it would be commercial, but they argue that it would not meet, for instance—but they argue that the reason they used it it would nct meet the physical or medical needs of the person traveling.

A decision is made that, sure enough, in this case because of this person not being ambulatory, or whatever, that this is OK and you can put it in the contract.

Another such occasion that they argue that it would be excessive—it would excessively prolong travel, and a determination is made baloney, it wasn't necessary for the person to be there on that day and could have taken commercial travel.

At that time the person—that's the first violation for which they are not going to be reimbursed. Is that correct so far?

Mr. **Kasich**. Will, and, Ms. Preston, correct me if I'm wrong, when they are in the process of negotiating the contract the company at that point would when they meet with the Government to draft up the contract that would be decided right then and there. They would make their arguments as to why this shouldn't apply, and if the auditors agree with them, fine. If they don't then——

Mr. **Martin**. OK, the question is this. I'm not talking about—they've negotiated their contract, but under some set of circumstances that you can't see that any one of these things, unreasonable hours, the determination has got to be made whether you've got to take the red eye to Orlando, or whatever, and what I'm asking if it's determined that under the law the person who is not supposed to—it's not an allowable cost, that's the first violation, is that correct?

Ms. **Preston**. Only if the violation—only if the regulations clearly state what is a violation. For instance, under this travel at unreasonable hours, or where it would excessively prolong travel, the Department is going to have to come up with regulations which say "travel during these hours is considered unreasonable." And only if it clearly states that in the regulations, and then the contractor submits it, would it be a violation. It is not a violation if the regulations or the law don't specifically state it, and it wouldn't be left up to a factual determination on every single case.

Mr. **Martin**. OK. Under the regulations, just, let's say, under this unreasonable hour it's determined they were in violation, that's once, and the cost is disallowed, right?

The second time they violate the regulation that relates to the physical need. Then we're talking about the double damages and the interest, is that correct? Is a civil penalty?

Ms. **Preston**. That would be the same type of submission.

Mr. **Martin**. Or had the criminal penalties, had we accepted that amendment, that would have been someone—that they would have been the 10 years in jail maximum penalty? Just so I understand this. Is that correct?

Ms. **Preston**. Yes.

Mr. **Daniel**. Mr. Chairman, let me continue, if I may. I guess I still have the time.

This is a very popular amendment, but I don't think it's very practical basically because of the money you're going to save.

Mr. Cofer, isn't there such a thing as the advance agreement on travel that they use over at the Pentagon?

Mr. **Cofer**. Yes, sir. It has——

Mr. **Daniel**. Tell us about the advance agreement on travel.

Mr. **Cofer**. There has been a trend in the corporate aircraft area for the Government, that is the contracting officer, to enter into an advance agreement with the company. And let's just say that the auditors year after year say "well, your corporate aircraft are questioned," and the auditors come up with a figure, say, $200,000, or $300,000 a year, what the companies are entering into the agreement with the Federal Government is we will not charge you over a certain amount, $300,000, no matter how much we fly that airplane. And so that means that the $300,000, or the $400,000 is a charge that the company cannot exceed.

At the same time that removes it from the auditors. The auditors don't have to go in and audit that account.

This whole area of contractor owned and leased aircraft has been a very controversial thing. And if you look at the statistics that we developed, out of the seven companies there was $2.9 million that was questioned by the auditors. The contracting officers gave back $2.5 million. They only supported the auditors at 13.7 percent.

The auditors are really looking for a number of things. They're looking for what was the purpose of the flight. Who flew on the flight, and what was their position. How can we relate this to the Government, and is there adequate documentation.

Now, in most instances in a lot of the cases the companies have refused to document why this flight flew. And at the same time it is not a clear violation under existing regulations that you cannot use a corporate contractor's airplane.

Mr. **Daniel**. How is this provided for under this bill? Mr. Kasich, could you respond to that?

Mr. **Kasich**. Well, what it says under this bill, Mr. Daniel, is that if you can show that—I guess what we're really making is a policy decision, and we're saying that corporation A has a corporate jet, and corporation B doesn't have a corporate jet, and corporation A is charging off the cost of that jet to taxpayers, and corporation B isn't. And what I'm trying to say is if it makes sense to fly a corporate jet the Government is going to——

Mr. **Daniel**. If the gentleman will yield. That's not responding to my question.

My question was, Mr. Kasich, is how do you take care of this type of situation under the description that Mr. Cofer just gave us of advance agreement on air travel?

Mr. **Kasich**. Well, under this bill, under this provision in the law, if you don't meet one of these five provisions, which is that the Government isn't paying out more money using the plane than using the commercial rate then they don't get to qualify.

Mr. **Daniel**. Does this invalidate then, any agreement that the Pentagon might have now with the contractor?

Mr. **Kasich**. Well, it wouldn't impact anything that we currently have. It would say into the future that when you go to make a contract it's made under these five provisions. So anything that they currently have obviously wouldn't be affected.

Now, if they could show, Mr. Daniel, that in the course of doing a contract that they can save money by doing this, that's provided in here. And we don't want them to ring up bigger costs. We just don't want them to ring up bigger costs. We just do not want them to ring up bigger costs because they are using it versus flying a commercial rate.

Mr. **Daniel**. I do not know how that type of cost is figured in. But you know, a lot of the companies, a lot of the contractors have their own strips at their plant. And there is a lot of time saved. I do not know who pays for that time under the conditions of contract A. But there is an awful lot of time saved if whoever it is who is going to fly can get into that aircraft at the plant, and take off to wherever it is that he is going instead of going out to the airport and waiting for an hour, or if the plane is late maybe several hours. I do not know that cost is figured in.

But I think that perhaps a lot has been overlooked in this. Another thing too that I think should be taken into account. You know, a lot of companies and the one that I was with was one of them, and that is how I happened to be so interested in this, that plane was used for a lot of different things, a lot of different reasons.

For example, if we had a meeting to be held prior to a board meeting, for example, the principals that were going to be involved in that board meeting would take this trip together, and that would serve as a conference room where you would work during that period of time.

Now I do not know whether that would work different in this situation or not, but it could. And I just wonder if this thing has been thought through thoroughly enough for us to act on it at this time.

Mr. **Kasich**. Well, the gentleman and I discussed this a little bit earlier, about whether they could have a meeting on this plane or something. And the one thing that I do not want to be is a demogogic in arguing this. I guess that what I am saying to you is that I am hard-pressed to know how I can tell somebody that an aircraft or that a defense contractor can fly from Los Angeles to Washington at a commercial rate that is four to seven times cheaper.

And that what we have decided in Armed Services is that that contractor rather than that, ought to just fly on the corporate plane even though the airport may be the same distance. Take my district. There are contractors in my district. There are no separate airports. They have got to go from their office to the airport just like I do.

And I would be hard-pressed to argue that they can take a regular commercial flight from Columbus, OH, to Washington, DC. But because they are a defense contractor, they ought to fly in a corporate plane at higher costs.

Now if they can show that it is cheaper. And second, and I want Mr. Daniel to understand this and everybody on the committee to understand this, we are not taking away their tax preferences. They still get to deduct the cost of doing business. All they have to do under this amendment is show that using their corporate plane is a necessity. That is really I guess the bottom line.

Mr. **Daniel**. The only point that I was trying to make is that the cost of that fuel and the pilot that is going to fly, that is not the only cost we are talking about. And that is why I am saying that I really do not know precisely what it is. The point that I am trying to make is: Have we had enough time to go into this?

I did not even know that it was in here until just a moment ago when Mr. Nichols pointed it out to me. And I just wonder whether or not we have enough information to act intelligently on it. I am not going to oppose the amendment. I am not going to ask that it be stricken. But I just wonder if we have given enough thought to it.

Mr. **Kasich**. Let me just say this, Mr. Daniel. I think that between now and the time that this bill moves through the legislative process. particularly when we get over on the other side or when we get to conference, I think that there will be ample opportunity to discuss that. I want to be reasonable on this. This is why I took Mr. Nichols' amendment to it, and tried to put those other provisions in there.

But I also do not want to scrape the guts of the amendment out. And if somebody can come in and show, I am obviously willing to listen.

Mr. **Daniel**. I thank the gentleman.

Mr. **Dickinson**. Mr. Chairman.

Mr. **Carney**. Mr. Chairman.

The **Chairman**. First Mr. Dickinson, and then Mr. Carney.

Mr. **Dickinson**. Mr. Chairman, not being an accountant, I am not sure that I understand really the import and the impact of all that we have proposed to do. And I would like to ask staff if they would for my edification and perhaps some of the other members if you would explain to me exactly what we are doing when we disallow expenses.

Now it is my understanding whether we are talking about corporate jet travel, entertainment expenses, or whether we are talking about any of the myriad things that are thrown in here, that we have two levels of expensing.

One is the thing that is causing all of the trouble. And that is when you charge this overhead against a particular contract. Another level of expensing, if I understand it correctly, and I want you to correct me when I am finished, is that you cannot charge it against that contract; but yes, it is a business expense that can be deducted against your profit.

And so what has gotten us in trouble and what has caused all of the flap here is that things that are clearly business expenses that can be deducted from your cost of doing business have not been treated that way by the contractor, but have been charged against a particular Government contract which means that they get reimbursed for that. And it is not a tax deduction. They get reimbursed for it.

And so I think that what we do not always understand in dealing with this matter—if I am stating it correctly—is that many of the things that we talk about that are claims that are disallowed is when the contractor comes in, and he says I want this charged against this weapon system or that contract with the Government in which case I get all of the money back.

If it is disallowed, that is not a part of that claim, it is not part of that contract, it is not part of that weapon system. So he cannot get reimbursed, but it is a business expense. He can still put in his chit against the IRS, and say it cost me to fly this airplane from here to there. It is a legitimate business expense.

Now I cannot charge it against that weapon system, I cannot charge it against that contract, but it is my plane, and it is a legitimate business expense, and it is deductible.

Now am I stating the situation correctly?

Mr. Lally. You are absolutely correct, Mr. Dickinson. Mr. Cofer when he testified the other day pointed out that all of these things or most of them are legitimate business expenses. There is no question about them.

Mr. Dickinson. So I think in part what we are doing in our conversations here in developing this piece of legislation, we tend to mix apples and oranges here. We are not saying that it is not a business expense, that he cannot deduct the cost of flying that airplane. It is just that he cannot charge it against the Government to get a full rebate, because it is not part of his contract.

And if he wants to take a Member of Congress out to dinner as a legitimate business expense just like any other business expense, it is deductible as a business expense, but it cannot be charged against overhead for a contract.

So I think that we have got this all convoluted and mixed up in our minds in many instances. So that we talk about one thing, and we really thinking about something else. And so I do not know how to differentiate in our discussion. But one is overhead against a contract, and the other is a business expense, both of which are deductible if it is correct.

But if it is not chargeable against a Government contract, it is still a business expense that he can take off. Now correct me where I am wrong.

Mr. Kasich. Mr. Chairman.

Mr. Dickinson. I have got the time.

Mr. Kasich. Would the gentleman yield?

Mr. Dickinson. No. I want an answer to my question.

Mr. Cofer. I will try and simplify this. With the exception of fraud against the Government, and let us forget that example, all of these expenses are a cost of doing business. All of these expenses are a deduction against the IRS as a normal cost of doing business.

So whether you charge it to the Government or not, it goes into the IRS as a legitimate business expense. And the second question is what is indirect cost? A direct cost for simplicity purposes is saying you have got a specific contract to make a submarine. If I can take my costs, be it manpower, be it materials and put it to that sub, it is a direct cost.

But as I go up the ladder, I start getting the president's salary. I get my accountants, my legal staff. It is indirect. We cannot allocate that cost to a specific sub. We may have 100 Government contracts. We may be having a lot of accounts with the civilian sector of our company.

So the indirect cost is something that I cannot say is directly chargeable to a specific contract or a specific end product.

Mr. Dickinson. But it is apportionable, is that correct?

Mr. **Cofer**. Yes, and this is what we come up through here. And one of the misconceptions, Mr. Dickinson, and we tried very hard in the hearing and very hard in the subcommittee through Mr. Nichols' effort to clarify this. Where we come up and say that company X submitted us a bill for country club, dues, let us say $1,000. The company comes in with what we call a submission, and the auditors go through it.

The Federal Government is not paying that $1,000. When the auditors get finished their work and the contracting officers get finished with this negotiation, what we are looking for is what percent of this total indirect cost that you have submitted is allocable to the Government.

For company X, it may be 15 percent of this cost. The other one is applicable to your civilian industry. So if you take the case of the $1,000 country club dues, what we say is allocable to the Federal Government; 15 percent of that for one company, 20 percent for another company.

So what we are really coming up at the bottom line is that percent of your indirect cost that is allocable to the Federal Government bill.

Mr. **Dickinson**. But when you are saying Federal Government, you actually mean a particular contract?

Mr. **Cofer**. I meant the Department of Defense.

Mr. **Dickinson**. For a particular contract or contracts.

Mr. **Cofer**. No, not to a particular contract. That is direct cost, that is direct, remember.

Mr. **Dickinson**. All right. But you are saying if there is only one contract, yes, it would be allocable there. If they have many contracts with the Government, then it would be apportioned among the various Government contracts, less their civilian business.

Mr. **Cofer**. Right. If you are one company and your total business is dedicated to the Federal Government, then we really do not have to go through this indirect cost, because it is all with the Department of Defense. If you take McDonnell-Douglas, say a few years ago which was primarily civilian that has now moved primarily military, then that indirect cost becomes how do we allocate it.

Because how do you take your corporate vice president and corporate president and say, you know, what percent of your time is on the Department of Defense versus what percent is on your selling to the civilian sector. So what we come through is a rate at the end. And that rate of all of your indirect costs is aplicable to the Department of Defense.

But all of this stuff is a legitimate business cost. And what Congress has said and what the Department of Defense has said through regulation is you just do not charge it to us.

In your example, if someone wants to come and take a Member, fly him to California, and have dinner, and visit his plant, and he gains a lot of new knowledge and he flies him back, what we are saying is do not charge the Federal Government, put it to your bottom line, and it will still be deducted from your IRS.

Mr. **Dickinson**. I yield to the gentleman from Florida.

Mr. **Hutto**. Thank you. I would like to ask. As I understood it a while ago, are you telling us that the allowable costs are reimbursed by taxpayers' money, and then they can also deduct that when they file their income tax to IRS?

Mr. COFER. No.

Mr. HUTTO. They cannot do both, can they?

Mr. COFER. No.

Mr. HUTTO. I mean under present law, you cannot do both?

Mr. COFER. No.

Mr. HUTTO. Well, OK, I just wanted to make sure of that. Thank you.

Mr. DICKINSON. I yield.

Mr. KASICH. I was just going to say to the gentleman from Alabama after that clear statement and enlightened statement, that I was going to nominate him for chairman of the committee. That is all.

Mr. CARNEY. Mr. Chairman.

The CHAIRMAN. Mr. Carney.

Mr. CARNEY. In subcommittee, I voted against this. I do not know if I will offer an amendment to delete it. In fact, I will not. But I have more than strong reservations. I am opposed to this part of the bill. And I would like to say why.

Mr. Cofer, both in subcommittee and here today, you said the problem associated with corporate travel was access to their books. If you had access to their books, you could say what segment of that travel indeed was an indirect cost.

Am I correct?

Mr. COFER. Yes, sir.

Mr. CARNEY. And do we not with this bill now put the burden of proof on that contract and if we do not get access to his books, automatically, there is no decision involved, the contract officer cannot do anything but say that it is a disallowed cost?

Mr. COFER. It is automatically disallowed.

Mr. CARNEY. So now we have settled that problem, am I correct, with this bill without the amendment?

Mr. COFER. From your perspective, I could say yes.

Mr. CARNEY. You know, I would like everybody on the committee to understand that we are entitled to 24 cents a mile to go back and forth in our district in our car. We are also entitled to 78 cents a mile to go back and forth if we fly in our privately owned plane. Are we ready to repeal that? We recognize sometimes that it is advantageous to get from one place to the other. And sometimes Mr. Daniel brings up a great point. It is very, very important, time is of the essence of having that corporate asset available to get a project engineer to a point where we want him, Government wants him there, and it is something that we are very, very grateful to at times.

Another point that I think that I would like to bring up is the point that I brought up in committee yesterday. I asked if they put 20 people on a corporate plane and flew them from point A to point B, and it only cost them the price of 10 people, could they get 20 people's coach fare.

The answer was no. You play by my rule this way, and you play by my rule the other way. That is unfair. If they put one on, they can only get one coach fare. But if they put 20 on, they do not get 20 coach fares.

So I am not sure that we are not going about this too fast. I recognize as Mr. Kasich says that it is very difficult for us to explain to our constituencies why people travel in corporate aircraft. But I think that these are some of the tasks that come with our job. We have to be able to answer those questions. We have to be able to take the heat.

If you cannot answer that question, if you cannot take the heat to that question, maybe you should not be here. I do not know. But I think that what we have to do is really look at the benefit we get out of those corporate planes as opposed to what we might lose by allowing this to go by.

And I am not going to offer an amendment to take it off. Perhaps on the floor of the House, I will. This is something that we want to keep in our minds.

The CHAIRMAN. We have been talking quite a while here without any particular amendment.

Has anybody got an amendment that they want to offer to the gentleman from Alabama's bill out of subcommittee? [No response.]

If not, maybe we ought to move the discussion along a bit.

Does Mr. Bateman have something to say here?

Mr. BATEMAN. Yes, Mr. Chairman, if I might. I do not want to violate what you are trying to do to make progress, and I have not drafted any amendment. I have not even focused on this provision. But Mr. Daniel's comments and Mr. Carney's comments impressed me as stating a good case for deleting this provision and simply including a provision supplementing the requirement for documentation that the Secretary of Defense be authorized to promulgate regulations regarding the reimbursable costs or the extent to which costs are reimbursible for the use of corporate aircraft.

The problem that I have with the language now in the bill is that to a large extent in a statute, it is seeking to write a good part of what would normally be done by regulations. And I think that that is a mistake, because I am not sure that it covers everything that ought to be covered. It has not thought about all of the considerations that Mr. Daniel and others have brought up.

I think that the bill would be improved if we deleted it, and perhaps just added some language or even report language suggesting that the Secretary of Defense promulgate some policies and standards for reimbursibility.

But since I have not drafted the amendment, I would like to then turn to the other point in the bill that I have a question about. That arises at page seven where the bill says that a contractor that submits a proposal for final settlement of indirect costs, and so forth, and so on, "shall be required to certify."

I am troubled by who is it that is required to certify on the contractor's behalf. Is this the chief executive officer of the corporation, is this the head of the accounting department, is it a clerk in the accounting department, who is doing this certifying. Because this provision is of the essence as to who is subject to penalties, and whether or not those penalties can reasonably be imposed unless you put in a standard of certifies to the best of his knowledge and belief.

The chief executive officer of a corporation submitting for final settlement of indirect costs $300 million that consists of 15,000 items should not possibly have the sanctions imposed against him if he has not reviewed in detail each one of the 15,000 items.

So I am troubled by who it is that must certify whether the contractor can select whomever he may want to certify. And given the jeopardy here, offer up a sacrificial lamb way down in the lower tiers of management, if management at all. Or whether or not we are saying to that chief executive officer, you certify to the whole kit and kaboodle in absolute and infinite detail whatever the status of your knowledge or good faith in making a certification.

Mr. LALLY. If I may, Mr. Bateman. The bill leaves it within the discretion of the contractor as to who is, as you say, sacrificial lamb will be. It might be his corporate vice president for finance, or it might be the head of his accounting department, or whoever it might be. We have not designated. It would be up to the contractor himself.

The CHAIRMAN. Herb, are you finished?

Mr. BATEMAN. Well, I would think or hope that I had made my point. That here the certification requirement is unconditional. You certify that it is in fact totally correct and all costs certified are allowable, whatever the status of your good faith in doing it. If you made a mistake, we are either saying something that we do not mean or we are doing something that is pretty outrageous in the context of equity and fairness to someone, and especially where we have not even defined or required who must do the certifying, because I think that it just invites perhaps somebody playing games with who they designate to sign the certificate.

Unless you put something in the bill that he certifies to the best of his knowledge and belief and in good faith or something of that nature.

Mr. LALLY. Well, we do leave within the discretion of the Secretary of Defense, Mr. Bateman, the form that the certification shall take.

Mr. BATEMAN. Well, you know, that is very easy. That is the easiest part of all. I can almost write spontaneously or dictate the terms of the certification. But who has the responsibility, the potential liability if it is not precisely and exactly correct. It is not as much or a different thing not covered by the form of the certification. We are talking about the content of what is being certified to.

Mr. COFER. Well, in most cases, the companies that we looked at, the chief executive officer for finance, the vice president of finance or the comptroller was the certifying officer who submitted the claim to the Government. In my opinion, it would be wrong for the Congress to tell a company what person or by what title he is to submit this bill. This is a corporate decision.

I think that it is inherent within the present contractors that a person of senior management with responsibility in the area submit this kind of claim. Now we cannot always think about General Dynamics or McDonnell. We have small companies out here who just may have one guy who is the junior accountant who is taking care of his thing.

So you have the whole dimension of it. So that is why I say that it has to be the company that makes that decision.

Mr. BATEMAN. If I may, Mr. Chairman. I do not quarrel with that. I agree with you that it would ill behoove us to dictate for all of the various sizes, types, and structures of companies that the Government does business with who should be their certifying officer.

But if we do not, and appropriately we do not, can you make them subject to the consequences of this bill if in the utmost good faith they have certified something erroneously, and therefore does that not argue for something that speaks in terms of certifies to the best of his knowledge and belief and in good faith.

Mr. LALLY. I believe, Mr. Bateman, that we discussed this in our subcommittee markup yesterday, and the subcommittee chose to leave it in this form rather than provide for the best of his knowledge and belief.

Mr. COFER. I think that the argument, and I am not a lawyer, the argument that was put forth was the reasonable intent or the reasonable man rule. That you could not hold someone at that level responsible. And the legal defense, and I am not a lawyer, would always be that what you suggested. I think that is implied.

Mr. BATEMAN. Mr. Chairman, let me hopefully expedite this in this fashion then.

Would there be any disagreement to some report language indicating that the committee had addressed this problem, and in the report language indicating that if the certification were to the best of knowledge and belief and in good faith, that it was not the thinking of the committee that any error in the certification would result in sanctions being imposed?

Mr. KRAMER. Would the gentleman yield?

Mr. NICHOLS. Let me respond to the gentleman if I might respecting his legal expertise, and I mean that quite seriously. I have no objection to report language being placed in there which would identify this man as some sort of a responsible senior corporate official responsible. I think that the gentleman would agree with me that in one company, he might be known as a corporate vice president for finance, and in another company he might be the comptroller for finance.

So I think that it would be difficult to spell out. If that language is agreeable with the gentleman, we will put it in the report.

Mr. BATEMAN. Mr. Chairman, I would appreciate that. And further, the caveat that we are not looking in terms of the sanctions in the bill to a totally inflexible standard of absolute accuracy, as long as best of knowledge, belief, and good faith has been applied by the appropriate certifying officer.

Mr. KRAMER. If the gentleman would yield for a minute. I think that your comments would be absolutely appropriate. This goes back to the original discussion we had. If we were dealing with a criminal situation in which the person doing the attesting and the certifying might be held responsible. But I do not believe that is the case based on the amendment that was offered before and relatively, and I delete the word relatively, very soundly defeated.

I think that it was clearly the intention of the committee that only the sanctions that are provided for in this bill are to be applicable. Those sanctions are to be applied not against any individual. They are to be applied against a company. So it is really not something that the individual doing the certifying is responsible for. If he is incorrect, then the company suffers whatever punitive sanction it be, whether it amount to a doubling of the disallowed costs plus interest, or whether it just amounts to the amount of the disallowed costs plus interest.

So I really think that if you went ahead, given the nature of those sanctions, collectively imposed against the company, and then imposed on top of that that in the event that the certifying officer himself acted in good faith perhaps on erroneous information that then obviated all penalties and sanctions that the bill provides, I think that you have basically provided a bill that has absolutely no teeth in it whatsoever.

And I doubt if that is perhaps maybe what you would want to do. I think that it is the criminal case that you are probably driving at, and that is not what we have in front of us. It is simply collective corporate civil responsibility. So I would hope that we would not include that kind of report language.

Mr. HERTEL. Mr. Chairman.

The CHAIRMAN. Enough already here. Dennis, then that is it. Nobody else. Mr. Hertel.

Mr. HERTEL. I do not want to belabor this, but I want to get something clear. I do not have a problem when somebody opposes an amendment like Mr. Carney, Mr. Sisisky, and Mr. Bateman when they are opposed to having a felony provision of the bill. But I want to make clear to the members that I have read the statute here, and there is no doubt in my mind whatsoever that the false statement statute would apply to this bill.

Does counsel disagree with that?

Mr. LALLY. No, I have no disagreement with that.

Mr. HERTEL. So there will be no criminal prosecutions under this bill by any other statute?

Mr. LALLY. By any other statute than the false statement statute?

Mr. HERTEL. Right.

Mr. LALLY. Yes.

Mr. HERTEL. There will not be then any criminal prosecution for violations of this bill as it is presently written?

Mr. LALLY. They would have to come under either the false claims or the false statement statute.

Mr. HERTEL. They do not come under the false claims or the false statement. I have both statutes before me.

Mr. LALLY. They do, Mr. Hertel. If it is a fraudulent claim, it would be subject to.

Mr. HERTEL. You are not saying in this bill that they are fraudulent or false. You are saying that they are disallowable.

Mr. LALLY. To be criminally prosecutable, it has to be false. You cannot prosecute something that is not false.

Mr. HERTEL. Well, false means fake.

Mr. LALLY. That is right.

Mr. HERTEL. So if they actually do pay the country club dues one, two, or three times, that is not fake. They actually did.

Mr. LALLY. That is correct.

Mr. HERTEL. So in those cases, where they actually spent money on those things and tried to get reimbursed for it, you cannot prosecute them under another statute?

Mr. **Lally**. That is absolutely correct, Mr. Hertel. They are unallowable, but they are not criminal.

Mr. **Hertel**. They are not allowable, but they are not criminal under this bill unless you put some criminal statute power in it. I want the members to understand that. I understand those members who are opposed to criminal penalties. But after the long discussion before, I want you to all understand that there are no criminal penalties in this bill, nor are there under any other statute that will be applicable to this bill.

Ms. **Preston**. We found a case, Mr. Hertel.

Mr. **Hertel**. I yield to Mr. Daniel.

Mr. **Daniel**. In any event, I hope that in our attempt to punish the violators, and there have been a lot of violations, that we do not destroy the industrial base of this country. And we ought to keep in mind that we have a problem now with General Dynamics and the Trident submarine. But we have no place to go. There is nobody else who can build a Trident submarine.

You know, it is characteristic of the American people when something happens, you always go too far the other way.

Mr. **Nichols**. Mr. Daniel, let me just respond. You have known me a long time. Do you think that I would be a party to destroying the industrial base of this country?

Mr. **Daniel**. Not Mr. Nichols, not Mr. Nichols.

Mr. **Bateman**. Mr. Chairman.

The **Chairman**. Mr. Bateman.

Mr. **Bateman**. Mr. Chairman, I would just like to take the time long enough to yield to staff to respond to a question regarding one of the legal authorities.

Mr. **Lally**. Mr. Chairman, Ms. Preston has a case here that she would like to give to Mr. Hertel.

Ms. **Preston**. I think that we have a clarification of the false claims problem, since I caused some confusion before. I think that it is probably correct that previously there has been no case that tested whether or not a submission of a cost was in fact a claim subject to the False Claims Act. But the certification provision does in fact make it that. The Department of Defense has just given me a list of cases under which they prosecuted when someone certified to something. It was then subject to the False Claims Act if they certified to it, and it turned out that it was not true.

Mr. **Hertel**. If it is not true. But if they in fact certify that they spent money for country club dues, then you cannot prosecute because they did in fact spend money for country club dues.

Ms. **Preston**. If they certify that it was allowable which is what they have to certify under the bill that in fact the cost was allowable, and if they knew that it was unallowable, then it is subject to false claims because they violated the certification.

Mr. **Hertel**. Who can sign that certification, can they hire an accountant to sign the certification, can they hire the guy down the street here to sign the certification?

Mr. **Cofer**. No, no. This is an internal, senior vice president of finance or the comptroller. This is not an outside CPA firm.

Mr. **Hertel**. OK, what happens then, who is guilty, the person who signs the certification, is he the one who is fined, who is responsible; is he the one who you would sue under false claims?

Ms. PRESTON. It would be the person who certified.

Mr. HERTEL. He would be the one you would bring a criminal action against under the false claims?

Mr. LALLY. The certifying officer.

Mr. HERTEL. OK, we are going to be talking to the Department about those cases specifically. Because I still think that they are talking about disallowable claims. And that they are taking the regulations that they currently have and putting that in the statute. And they they already have a certification process, and they have not been able to prosecute in those cases.

Ms. PRESTON. This is new, the certification.

The CHAIRMAN. All debate on this amendment has ended. Let us have a vote on this. But before we vote on this, let me just remind everybody of where we are with the revolving door legislation. We do need to have one if only for protection, because something is going to pass when this bill hits the floor on the revolving door. So we do want to get an agreement.

We want to have a bill that came out of this committee, I think, because we are going to have something that will be better than is likely to be drafted by somebody on the back of an envelope on the floor who is not on the committee.

So what we will do is send a draft of technical corrections and things incorporating Mr. Bennett's and several others that would clarify what we were talking about.

Mr. BENNETT. I just want to make one point here. I am personally going to offer a revolving door amendment.

The CHAIRMAN. The gentleman and everybody always has the right to offer any amendment they want. We would like to get an amendment out of this committee that the majority of the members of the committee could support when we go to the floor.

The amendment will be sent or the technical language will be sent to everybody's office. All of you lawyers take a look at this thing, will you. And when we come back. We will not be in session next week. We will be back one more week before we go to the floor. We would need to have another committee meeting after we have had informal discussions, and hopefully come to some resolution on the revolving door issue.

All right, let us have a vote on the Nichols bill.

Mr. NICHOLS. I call for the question, Mr. Chairman.

The CHAIRMAN. All in favor, say aye.

[A chorus of ayes.]

The CHAIRMAN. Opposed.

[No response.]

The CHAIRMAN. The motion is carried.

Mr. DARDEN. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. DARDEN. I ask unanimous consent to be recorded as voting no to Mr. Hertel's amendment to this bill.

The CHAIRMAN. Without objection.

Mr. HUNTER. I ask the same request, Mr. Chairman.

The CHAIRMAN. Without objection.

[Whereupon, at 4:07 p.m., the meeting was adjourned, subject to call of the Chair.]

# CONTINUED CONSIDERATION OF H.R. 2554, A BILL TO LIMIT CONFLICTS OF INTEREST IN DEFENSE PROCUREMENT

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House of Representatives,
Committee on Armed Services,
*Washington, DC, Thursday, June 6, 1985.*

The committee met, pursuant to call, at 10:28 a.m., in room 2118, Rayburn House Office Building, Hon. Les Aspin (chairman) presiding.

## STATEMENT OF HON. LES ASPIN, A REPRESENTATIVE FROM WISCONSIN, CHAIRMAN, HOUSE COMMITTEE ON ARMED SERVICES

The Chairman. The committee will please come to order. The committee will come to order.

We have a number of issues that we need to discuss this morning and a couple of bills that we would like to try and discuss if we can, but the first matter we would like to talk about a little bit, and I will turn it over to Kim to explain the situation, and that is a matter of the supplemental that came to the House floor that we were debating and involved with today, which it is a perennial problem that our committee has had with issues that have been voted on at the Appropriations Committee where the money has been appropriated but that has not been authorized, and we have got another problem that we wanted to report to the committee that we got involved with the rule of the supplemental a little bit. Let me let Kim explain the background.

If you could, Kim, take a little time to explain the background of the thing and then where the issue is now, just so the members know that we have got a little problem with part of the supplemental that is coming out of the Defense Appropriations Subcommittee. Kim, go ahead.

Mr. Wincup. Yes, sir. At the chairman's direction, the staff examined the report on the supplemental appropriations.

In fact, there were two kinds of violations of House rules with respect to authorization in the Defense section. Potentially one was reappropriations, transfers of money that were appropriated and authorized for a certain purpose that they are switching—arguing that they are prior year savings that aren't needed elsewhere—to use the funds for the pay raise item when in fact the transfer of those moneys from one account to another had not been authorized. This is essentially a technical violation.

The other point related to a transfer of moneys from shipbuilding to funds for start-up of the rewinging of the A-6E aircraft. The rewinging of that aircraft had not been authorized by the committee. It is a $1.2 billion program when it gets started and it would set up the appropriations for $240 million.

The chairman sent the Rules Committee a letter asking them not to waive the point of order on those provisions because they had not been authorized, and the committee hadn't had a chance to examine them.

In discussing it with the Rules Committee, there is a problem that the technical violations with respect to the pay raise, the transfer of money are wound into paragraphs that include authorized items. There was no way to segregate out just the items that dealt with the transfer. In fact there is no substantive problem with them. They are going to be used for a pay raise which the committee has approved. The money is there to be used. It was simply a technical violation, so rather than throw out the entire paragraph that could have knocked out both authorized and unauthorized items and would have affected the pay raise, the chairman decided in that case it was better to let the Rules Committee know that while we have a problem with it, it wasn't a serious violation and wouldn't object to that.

In the case of the A-6E rewinging, though, the rule that came out does not waive a point of order on the rewinging of that aircraft. And that provision, it will be considered this morning.

We have had discussions with the Appropriations Committee about it and it is our understanding that the author of the amendment in the Rules Committee will offer an amendment on the floor today that makes that appropriation subject to authorization which would then allow the committee to look at the issue substantively and make a decision whether it is the appropriate thing to do before the money can be expended which should solve the problem.

Mr. DICKINSON. What did you ask the question for—who is the author of the amendment?

Mr. WINCUP. Mr. Dicks.

Mr. DICKINSON. Who is going to rewing, I mean the wing?

Mr. WINCUP. It is, my understanding is that Boeing is the——

Mr. DICKINSON. I think it ought to be noted that anybody on this committee is—there is subterfuge to get around the authorization process. You have got to put that on the Appropriations Committee, and why waive a point of order so we can't even object to that? It is over a $1 billion program.

I would certainly hope the Rules Committee wouldn't grant such a waiver and I don't know what we can do about it if they did.

Mr. WINCUP. They did not waive that point of order. The Appropriations report did say that that money would be subject to authorization, but it doesn't say so in the bill. Mr. Dicks indicated last night that he will offer the amendment on the floor to make it subject to authorization in the bill language.

Mr. DICKINSON. I don't know what the chairman plans to do, but I am going to fight it like hell.

The CHAIRMAN. We are involved in the fight, and I think that clearly, unless that amendment is put in and unless the bill says that, we ought to raise the point of order, so we will be watching it on the floor to make sure that that amendment is offered. The rule allows us to make a point of order.

Mr. WINCUP. The rule permits the point of order to be offered. Of course, the fact is you will be past the point where the point of order could be offered by the time the amendment would be in order, but Mr. Dicks has indicated--I think maybe you all would like to, someone would like to confirm that with him, but I spoke to him last night. He called and said he will, in fact, offer that amendment.

The CHAIRMAN. Thank you. Are there any other questions on this matter that might come up?

The other issue is when the Defense bill is going to be on the House floor. I am sure you have heard that we have run into a snag on the Nicaragua issue, so that the plan on the floor is to try and finish the supplemental today all except for Nicaragua, that Nicaragua will come up next week and so we have postponed action on the House floor on Nicaragua until next week and our Defense bill then comes up the week after so they want to move the Defense bill now to the next week, which is all right because we do need a good, solid week at it. It would be just as well not to come up after a fight on Nicaragua; just as well not to have intervening weekends where people can think up some more amendments, so the plan now is for the Defense bill to be on the floor the week of the 17th.

Mr. HILLIS. When?

The CHAIRMAN. The week of the 17th—not that Monday. The 17th is a Monday. We will bring it up on Tuesday, the 18th. We have completed general debate so when we start we start with the 5-minute rule and we start with the amendments, so we start right off with the bill on the 18th.

What I would like to do is offer to the rest of you as long as we have got some extra time on the issue and you remember when we did do the bill and reported out the bill to the full committee and reported the bill to the floor we did not have a budget resolution.

Since then, we now have a House budget resolution and the budget resolution is at a nominal freeze. It is a level of spending that is a nominal freeze. That is in our budget resolution. Where we are as a committee is that a freeze plus inflation, and that is the level which is some $9 billion more than where the budget resolution says we should be.

I would like to try next week to look at some ways in which we might make the committee position consistent with the budget resolution, and we will do this next week. I would like to meet with the senior members of the committee next week, the chairmen and the ranking minority people on each of the subcommittees, and let's talk about it and see if we can't figure out some way to make the thing consistent with the budget resolution.

We do have one way in which we can make it consistent with the budget resolution which is that Cap Weinberger has suggested some $4 billion, four-plus billion dollars' worth of savings. He suggested those to the Senate and again that happened after we had reported our bill out, and those same savings could apply to our bill because the savings that he suggested to the Senate would also apply to us.

There is money that when they put the budget together they thought they needed and now after they have had some experience in the first quarter of the year they don't think they need that much money, so that is one possibility.

Mr. **Leath**. Will the chairman yield?

The **Chairman**. Mr. Leath.

Mr. **Leath**. Mr. Chairman, are you suggesting that what we do is link it in terms of just how we would do this in case that is the way it comes out of conference, or are you thinking in terms of whether we would do this on the authorization bill before it goes to conference?

The **Chairman**. I am thinking in terms of probably doing it even if we don't get a conference because we are going to have to report our bill out before the conference report.

Mr. **Leath**. If the gentleman would continue to yield, I don't think I would agree with that, Mr. Chairman, because I think that many of us who supported that nominal freeze on the precondition that some other things happen, and if some other things don't happen in that conference, they aren't going to be in the direction many of us felt they would be, I certainly don't think that we are going to be in a position to support that nominal freeze. I think that would be a mistake for us to do that prior to the conference.

Mrs. **Holt**. Would the gentleman yield?

The **Chairman**. I yield to Mrs. Holt.

Mrs. **Holt**. I agree with the gentleman from the Budget Committee. I think we have never done this. This first budget if we get one out of conference is simply a target and I think if the authorization committee doesn't make the point that these are the things that we need, I think we are really shirking our responsibility and so I would oppose it.

The **Chairman**. Mr. Badham.

Mr. **Badham**. I am in the same situation for different reasons. We have been to the Rules Committee. The rule has been adopted, as I understand it, and we have completed general debate based on the rule that waived the budget resolution requirements.

I see no reason to change just because our Budget Committee hasn't done anything. They haven't even met with the Secretary yet, so I would oppose marking it to a lower mark at this point.

Mr. **Skelton**. Mr. Chairman, I have a parliamentary inquiry on this. Suppose we do reduce our figure and then in conference it comes out somewhere over where you have the old figure?

In other words, are we doing an extra step that we need not do?

The **Chairman**. No, no. We are going to have to go into conference with the Senate, and what usually happens is that the Senate authorization bill is consistent with the Senate's budget resolution. The House authorization is consistent with the House budget resolution, and we have to work it out in conference. In other words, some of the things that the Senate passed that we didn't pass we would accede to in the Senate, in the conference.

Mr. **Hertel**. Mr. Chairman.

The **Chairman**. Mr. Hertel.

Mr. **Hertel**. Mr. Chairman, I understand what the people are saying because for all the reasons that they are putting forth; it is also very difficult at this stage to get that amendment, but our authorization is at the Senate level; is that correct?

The **Chairman**. Yes.

Mr. HERTEL. And the Senate, of course, complied with the budget, right?

The CHAIRMAN. Yes.

Mr. HERTEL. Well, I don't go into meetings where the first action, major action that this House takes is going to be to violate the budget that we just passed last month, and so if we don't make the cuts they will be made on the floor by other people who are not as well informed as senior members.

Mr. BADHAM. That's the rule.

The CHAIRMAN. Will anybody else want to be heard on the subject? We will discuss it next week. We are going to have a meeting next week, but I would warn the members that it does seem to me that we have got two problems. One is the floor amendment. That brings it down—we have had four authorization bills on the floor so far. Every one of them came in over a freeze and in every case, an amendment was offered on the floor for a freeze and carried overwhelmingly, so it seems to me that that is a very likely amendment again.

Now what those amendments are, of course, are across-the-board cuts, and I mean we all ought to go and talk to other members.

I urge all the members of the committee to talk with their colleagues and get a sense as to what they think and what you think will happen if we bring the Defense bill to the floor later than the budget resolution.

Mr. DICKINSON. I appreciate your bringing this up and getting forewarned, and we will meet next week and make some policy decisions I suppose, but I would just like to point out that if we should go back and cough up some additional funds and try to meet the target, there is no way in this world that that is going to preclude somebody from offering an additional across-the-board cut and put it even lower so we are not going to do any good doing that. Let's stay where we are.

Mrs. LLOYD. I think we have to not overlook the possibility that there may be amendments offered that would make cuts that do not reflect the will of the majority of this committee, and I think that with that probability that if we keep things where they are right now then we can face that issue as we move on the floor and then make those decisions.

I think it may be done for us. I don't see any point in doing it twice.

The CHAIRMAN. I understand.

Mr. DANIEL. Mr. Chairman, there is some confusion about what we have actually focused on. As I understand, the Senate passed that bill that included an inflation factor of 4 percent, is that correct?

The CHAIRMAN. That is what it was coming out of the committee. They haven't finished the bill on the floor yet.

Mr. DANIEL. Well now, ours is what?

The CHAIRMAN. Ours is the same thing.

Mr. DANIEL. It is 4 percent. Thank you.

Mrs. BYRON. Mr. Chairman, we have a process where we have committees that are mandated by Congress to markup a bill, to go to the floor with that proposal.

It concerns me that over the last few years we are beginning to change that process so dramatically. The appropriations are beginning to really try to tell the authorization committees what they can do and what they can't do. We are now beginning to look at cuts because of the Senate has done something when we believe strongly in what we have done—if you would sit and look at the rhetoric and the testimony that was taken before this committee and before all the subcommittees before we marked our bill, I am sure each and every member of this committee has a rational reason for the way they have voted and the way we worked because it was not easy to do, but then to sit and to change your mind the week before we go to the floor and continue to move at the whim of everybody that says we are going to fight you on the floor, we always go to the floor with a bill that was fought over and we always come out with, I think, a good consensus because we have gone in this committee with our logic and when we go to the floor we are then ready to be able to defend our programs and our projects, and I think today that to start to look at it and to cave in because somebody says they are going to do something is exactly the wrong way to behave, and I think this committee has enough strengths and enough respect on the floor that when we go with the bill that we think is necessary and with programs that we think are vital, that we are going to be able to sell those programs.

The CHAIRMAN. Mr. Kasich.

Mr. KASICH. Just two items that I think are really with respect to what Mrs. Byron has said. There are two things that come up that concern me, and one is whether next week we have an opportunity to look into these inflation items because I have a feeling that we are going to hear that out there, and I would like to be squared away on that myself.

And second was the CBO study that analyzed where the money was spent, and I wondered if, when we meet next week, whether those two issues can be discussed and put on the agenda—inflation and that CBO study—because that is included in our own conference and I would like to know what the military's response is.

The CHAIRMAN. What CBO study?

Mr. KASICH. The one that talks about what we have spent money on, where it has gone, what it has done in four or five different categories.

The CHAIRMAN. Mr. Montgomery.

Mr. MONTGOMERY. I would like to follow up. I mentioned to you yesterday that there is some talk of some amendments and working out a package.

I think we ought to stay with our bill as long as we can. We voted it out of here and it had your support, and I don't think we ought to make any agreement if we don't get beat on them. Let's stay with what we have got and let's don't do like the other committees—rewrite the bill when we get out there.

We have got a pretty decent bill. I think we ought to ride with it just as long as we can?

The CHAIRMAN. Any others? Mr. Hertel.

Mr. HERTEL. Well, Mr. Chairman, I agree with what has been said here and I agree with what the gentleman said about the committee system and the problems we have got in other bills coming out of committee. Across-the-board cuts that don't get consideration and information that we have in testimony before committee, when we spend all that time—I am talking about the reality of the situation, that is, the 92-group and the Republican Party proposed to freeze, they voted for a freeze. The Congress overwhelmingly passed the budget for a freeze, and there is going to be a freeze.

I guess the question is who is going to execute it? Those people on the floor or the senior members here who made recommendations, who know more about it?

The Chairman. Any other comments?

Mr. Bateman. Mr. Chairman.

The Chairman. Mr. Bateman.

Mr. Bateman. It would seem to me that if the reality ultimately becomes a nominal freeze instead of what we reported to the floor, we do the best we can about it under those circumstances, but I would hate to see us prejudge and concede that a nominal freeze is ultimately going to be the judgment of the Congress of this session. We don't actually have a budget yet. We have passed a budget bill but we do not have a budget, and to now say that before those issues have been finally resolved that we ought to act as if we have a final budget which is a nominal freeze, I think would be a clear invitation for us to do less than the committee's judgment would indicate they felt should be done, and I would hope that we would make such adjustments and take such positions as our best judgment permitted when that has become a final and immutable reality and not just assume it is going to happen in view of the judgment of the committee that the freeze plus inflation was the most responsible position that we could take with reference to our national security.

The Chairman. Any other comments? OK. Let's go on to the issue of a couple of bills that we have got before us here this morning that we are going to review. Can Bob and Colleen and Russ maybe come up here, take up the issues involved?

Mr. Bennett. Would it be an appropriate thing for me to read the bill, attempt to amend it?

The Chairman. That's exactly right.

Mr. Bennett. I would like to be recognized.

The Chairman. All right. The Chair recognizes the gentleman from Florida, Mr. Bennett.

Mr. Bennett. I would like to say that the bill that came from the committee I think was a well-thought-out bill. On the subject of the bill, the staff had plenty of opportunity to bring suggestions for changes to it. Every Member of Congress took months to handle this bill, and we had plenty of opportunity to have any amendments offered.

I thought it was a good bill before an amendment was offered in the last week, but I didn't object to the bill—I objected to the amendment by Mr. Spence, but not the passage of the bill with the amendment on it.

Actually the bill we have before us now is in the printed form, H.R. 2554; is that correct?

Mr. Schafer. Yes, sir.

Mr. Bennett. I would say by way of clarification the staff has done a lot of work, not with any counseling by me or I don't know of any other members. They worked themselves on trying to find things that they thought might be prudent, and they have given me a paper which is dated May 24, and the first page of that paper, I checked all those amendments with Mr. Schafer, and I have no objection to those on the first page. They are purely technical amendments.

It is my feeling they are not needed, but if it makes people happy—apparently it makes the staff happy—that's fine to add on.

The CHAIRMAN. Does everybody understand what Mr. Bennett is talking about? You all ought to have a May 24 memorandum to members of the committee, subject, revolving door legislation, a memo. That is what Chairman Bennett is referring to. It is a staff-prepared memo on the issue which is highlighting as I understand it, highlights the issues.

Mr. BENNETT. Yes, that's right.

The CHAIRMAN. Go ahead.

Mr. BENNETT. I didn't prepare this. The staff did and did a good job. I think we have to address each one of these amendments anyway.

On the first page, the first six are purely technical and have nothing really to do with the substance of the bill.

The seventh, eighth, and ninth I personally object to because they destroy the effectiveness of the bill in my opinion. Now there are some other points down here.

In the middle of the page it says, "In addition to the above listed changes, the staff draft includes alternative treatments of the following:" Some of those, most of those I don't object to. One or two I do, but I think the way to handle it would be to take, the staff remembering that I, at least the chairman, I don't think any members of the committee would object to the first six, that we just go through the bills in order to start at page 1 of the bill, and when we get to one of these six you can mention the fact that it is one that we have agreed to as being purely perfunctory, but when you get to one which is not purely perfunctory, then I would like to address it and have everybody else address it.

Mr. BADHAM. What's before us is not the original bill before us?

The CHAIRMAN. The original bill is before us.

Mr. BADHAM. Should we have the chairman offer the memorandum as an amendment in the form of a substitute so we have that before us?

The CHAIRMAN. No.

Mr. BENNETT. We do not have that before us.

The CHAIRMAN. What you have before you, if you look at the staff discussion draft, after the first two pages, three pages of the memorandum, we come to a draft of the bill. That is in essence the bill that was reported out of the subcommittee, but in certain places you have got some options to vote on and some suggestions which we have to either vote for or vote against, and I think that what Chairman Bennett is suggesting is that we go through the bill that is reported out of the committee, look at the alternative that we have before us, and where we have to choose one or the other, make a choice, or if it is a choice of putting something in or leaving it out, make that kind of a choice as we go along.

Mr. **Badham**. Further inquiry—any language that is in the mockup, that is unadulterated—that is ununderlined, unbracketed, is original language?

The **Chairman**. Correct.

Mr. **Badham**. Which is before us?

The **Chairman**. Correct.

Mr. **Schafer**. Mr. Chairman, there is language incorporating changes as detailed on the first nine items on page 1 and 2 of the memorandum, the first six of which Mr. Bennett indicated he thought were reasonable improvements, the last three of which he has raised a question about.

Mr. **Bennett**. A good way to handle that would be this—why not have Mr. Schafer address each one of those points either as he comes to them or give the six right now. I don't care which. Which would be easier for you?

Mr. **Schafer**. We can do it either way.

Mr. **Bennett**. The way I would suggest is the way we come to them.

Mr. **Dickinson**. I would like to make an inquiry. It is just a clarification. I assume from what has been said here that since we start out with this bill, that anything that is offered to change it there would in fact have to be a motion made to adopt that as part of the bill? Someone would have to do that?

The **Chairman**. Correct.

Mr. **Dickinson**. OK.

The **Chairman**. Mr. Carney.

Mr. **Carney**. I am trying to jog my memory. The last time we met we did not bring H.R. 2554 up for amendment; is that correct?

Mr. **Bennett**. No. I brought it up. It was jerked away from me, removed temporarily.

Mr. **Carney**. The point I am trying to make is, is that the copy, H.R. 2554, has not been altered at all in the last week; am I correct?

Mr. **Bennett**. I offered it last week.

Mr. **Carney**. Pardon me?

Mr. **Bennett**. I offered it the last week.

Mr. **Schafer**. Mr. Carney, at the last meeting we had an introduced version of the bill. We did not have the printed version which you now have before you, but it is identical to what was before you in the last meeting.

Mr. **Carney**. I am saying we did not make any changes, any amendments in the last week.

Mr. **Schafer**. That is correct.

Mr. **Skelton**. Mr. Chairman?

The **Chairman**. Mr. Skelton.

Mr. **Skelton**. I don't believe I was the last one—was there no hearing on this bill?

The **Chairman**. Let me review for the committee. The bill was considered in the subcommittee, Mr. Bennett's subcommittee. Hearings were held. A markup was held, and a bill was reported out, 24——

Mr. **Schafer**. H.R. 2554.

The **Chairman**. That's the bill that came out of the subcommittee. It was reported to the full committee the last time we met. A number of questions were raised and a number of objections were raised, and we could not resolve that issue. We did resolve the issue of the allowable costs that came out of Mr. Nichols' subcommittee, but we did not resolve the revolving door.

Since that date, the staff has gone back and incorporated the suggested changes in that bill, in the draft that we have before you as options. All right. So we have before you the text of the bill that was reported out of the subcommittee with underlined various options that were suggested.

What we were planning to do is, I think the chairman wanted to do was to take the bill, go through it, and each of those points where there is an option, we need to discuss it and resolve it.

Mr. **Bennett**. That is the way you are supposed to do it. That's the way I would like to do it.

Mr. **Schafer**. Mr. Chairman, would it be useful to the committee—I have prepared about a page and a half summary of the issues.

The **Chairman**. I think we ought to start as the chairman suggested, go through the bill and then decide the issues.

Mr. **Bennett**. When you get to one of these minor things, these are one of the minor things and the chairman has said he sees no objection to it——

Mr. **Kramer**. Could you shed some light on why this unusual procedure with this bill and why the subcommittee did not perhaps re-mark, in effect, a clean copy that they will submit to this committee?

Mr. **Bennett**. I would have been delighted to do it but that opportunity was not afforded. I brought the bill before the committee and the chairman took it away. He assigned it to the staff, and the material that is before you now didn't come out of the subcommittee. It came from the staff. It didn't come from the subcommittee.

The **Chairman**. The bill that is before you came from the discussions that ensued in the full committee when the bill was reported out. When the bill was reported out of the subcommittee a number of issues were raised, some by Mr. Carney, by Mr. Spratt, by Mr. Sisisky, by Mr. Hunter. Various other people got involved in it. You got involved. Mr. Hertel got involved. There was a big discussion about this bill.

What the staff did was to take those discussions and lay out the options in this draft and so we now have a systematic way of dealing with the issues raised by the full committee when we are considering the subcommittee bill.

Mr. **Bennett**. The subcommittee would be delighted to have it reassigned to it if the committee felt they wanted to do that, but it would come back, it would come back the same way in which it came to you before. It was a good bill except for one amendment when it came to you.

Mr. **Dickinson**. If you would be glad to accept it back for remark by the subcommittee, I would like to move that we do that.

You said you would be happy to do that. I am just asking, that's a good way to do that. That cuts out 40 members having to hammer on the thing, so if you agree to that, I would so move.

The **Chairman**. Before we do that, remember before that subcommittee can report this bill back out, we are going to have an amendment on the floor.

Mr. **Dickinson**. Why is that?

The **Chairman**. Because it is going to be offered on the floor for sure. There are three issues. There is no doubt that they are going to come on the floor.

Mr. **Dickinson**. You mean on the part of our—there is no reason within the next week that we can't reconsider this and report it back out, is there?

We have got a week. They can do that.

Mrs. **Holt**. Mr. Chairman, we never have felt that we had to govern ourselves by what was going to happen on the floor. We ought to have the strength of our convictions about what we think is the right thing to do.

If we start trying to anticipate every goofy amendment that is going to be offered on the floor then we might as well give up and quit, just go to the floor and let them mark it up there.

Let's send it back to the chairman of the subcommittee.

The **Chairman**. The chairman of the subcommittee wants to offer an amendment on the authorization bill.

Mr. **Bennett**. Mr. Chairman, I was notified a long time ago, it has been in the record a long time that this bill, H.R. 2554, minus the one amendment which I vigorously opposed in the subcommittee, will be offered by amendment.

Now, at that time somebody could offer that amendment. We could thrash it out on the floor. If you don't do this, if our committee does not act on this, you are going to have something on the floor that is going to make this look very, well, make this look perfect really.

What happens on the floor is going to be much more extreme in every respect, so I am for a moderate bill which is H.R. 2554 minus the Spence amendment. That would be a good bill, and I am going to offer it. I don't think you can pass the amendment, Spence amendment, on the floor, and I don't think you can pass it in this committee, but anyway, it did pass the subcommittee. Whether that's right or not, that is what I am going to do, and I am sure it will pass or it will be much worse from the standpoint of the extreme conservatism on the floor.

The **Chairman**. Mr. Badham.

Mr. **Badham**. Mr. Chairman, I am distressed. We aren't in the sausage-making business. We are in the legislative business. This bill was brought to us last week by the distinguished chairman, Mr. Bennett, our good friend. It has a very simple proposal driven by the Washington Post and the New York Times and others to say that people should not do bad things.

The problem with the distinguished chairman's contention is that there are good people doing good things that get caught up in this same web. The bill is not perfect. It was not perfect when it came to us last week. It is not perfect in this memorandum here which gives us a multiple choice piece of legislation.

I suggest that this committee act like the Committee on Armed Services.

Mr. **Bennett**. The subcommittee has done so.

Mr. **Badham**. As we look at the faces on the wall looking down and laughing from the wall, this is no way to run a committee, Mr. Chairman.

I suggest we go ahead with the suggestion to send this bill back to committee and let it be heard. Let it be drafted. Let it address the situation, not be reacting to the New York Times and the Washington Post for something that may or indeed may not be going on.

The **Chairman**. Mr. Carney.

Mr. **Carney**. I think some members have a misunderstanding as to what is happening. I served on a subcommittee that discharged this bill. I voted for the bill. The bill as it has been discharged from the subcommittee is before the full committee.

We are not doing anything different than we have ever done. This bill is subject to amendment by the full committee. I think the chairman of the full committee recognized there are members on this committee that brought some legitimate concerns to him at the time that it first came out and to do something as he did to accommodate everybody, put a simple format together which we can work at and look at and we can vote on the options as we referred to it before, there is nothing wrong with what we have done. There is no subterfuge here.

If anything, the chairman worked to make it clear and concise so we know what we are talking about today. Why don't we just put H.R. 2554 on the floor and put it open to amendment right now and move on and get the bill done with? Because what is going to happen is precisely what the chairman said. Someone else is going to offer it on the full House floor during the authorization process.

Mr. **Bennett**. Why don't we just decide? I move that H.R. 2554 be before our committee for a vote. I do want to move an amendment to it that will decide whether we are going to decide it this morning or not.

I am thoroughly prepared to go to all these issues. There is no secret in any of these issues. Most of them come from the staff, not from the committee.

Mr. **Daniel**. Mr. Chairman.

The **Chairman**. Mr. Daniel.

Mr. **Daniel**. Mr. Chairman, I respect the views of the chairman of this subcommittee, but it seems to me that the subcommittee is in a position to work out these differences better than the full committee is. I know I don't understand them. I am sure that a lot of other members don't either, so we are letting Mr. Bennett—I would like to move the previous question on Mr. Dickinson's motion to let the subcommittee take a look at it, see what should be incorporated, what cannot.

I move the previous question.

The **Chairman**. Before we do that, let everybody have a chance to talk.

Mr. **Sisisky**. Mr. Chairman, I was going to suggest the same thing and between now and—we can have a meeting next Tuesday, Mr. Chairman. I would be more than happy.

The **Chairman**. When?

Mr. **Sisisky**. Monday afternoon.

Mr. **Bennett**. I'm serious about it.

Mr. **Sisisky**. Do you want to do it Monday morning? I will try to get back.

Mr. **Bennett**. Monday afternoon would be great.

Mr. **Sisisky**. I think what we will do, in the meantime some of us who have been working and been concerned about it, we will prepare another bill, a substitute, and we will vote that up or down and then bring it back. I think that is the easiest thing to do.

The **Chairman**. You have got two options maybe, or maybe if you can't agree we will have a couple of options. All right. We do have some more time. The original time, we were up against the amendment, the bill on the floor next week. If we want to offer this amendment on the floor we would have to deal with it today. We don't have to do that. We have got a delay.

All in favor say aye; opposed? The motion is carried. Mr. Bateman?

Mr. **Bateman**. Mr. Chairman, I would just like to add a plea that if the bill now back to the subcommittee is going to be dealt with further, that we try and deal with it Tuesday as opposed to Monday because of scheduling problems.

Mr. **Bennett**. I just think by the time we get to Tuesday I am overwhelmed. If you want to do it Tuesday at 10 o'clock, that's the only free day I have got. We will do it on Tuesday. I will accommodate my staff, my feelings to suit yours. It will be Tuesday at 10.

Mrs. **Byron**. When you say back in subcommittee, is this back in the Seapower Subcommittee? Is this back in the combination of Investigations and Seapower Subcommittee which I think held the joint hearings?

Mr. **Bennett**. Seapower.

Mrs. **Byron**. Weren't there joint hearings held?

Mr. **Bennett**. There were originally joint hearings. When it came down to the passage of the Nichols bill or the Bennett bill they were then divided for markup, so this bill has only been marked up, only been brought out, only been assigned to the Seapower Subcommittee. It is not assigned to Investigations, and the other committee, Nichols bill was not assigned to our subcommittee.

Mr. **Daniel**. Mr. Chairman, the purpose of my motion was to reassign the bill to the Seapower Subcommittee.

The **Chairman**. Any other comments? All in favor say aye; opposed?

[The committee proceeded to discuss other business and recessed at 11:15 a.m., until 2 p.m. the same day, to continue hearings on another matter.]

# CONTINUED CONSIDERATION OF H.R. 2554, A BILL TO LIMIT CONFLICTS OF INTEREST IN DEFENSE PROCUREMENT

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House of Representatives,
Committee on Armed Services,
*Washington, DC, Thursday, June 13, 1985.*

The committee met, pursuant to notice, at 2:10 p.m., in room 2118, Rayburn House Office Building, Hon. Les Aspin (chairman) presiding.

The **Chairman**. The meeting will come to order.

Let me just talk a little bit about the schedule and the schedule for next week and where we are with the Defense authorization bill. We are scheduled to be on the floor next week. We have had the general debate on the bill you will remember. So we are starting right away on Tuesday with the 5-minute rule. And we have a number of days of hard work. It would be nice to try and finish it in 1 week.

And we are talking about going to 8 o'clock at night on a couple of those nights next week to try to see if we can get it done.

Two other issues. We do have here today a couple of issues on the procurement reform. And let me tell the members of this committee that procurement reform is going to be one difficult thing on this bill. There are 25 amendments, is that right, Bill?

Mr. **Nichols**. That is what we are told.

The **Chairman**. Well, it is multiplying. I mean, we have many procurement reform amendments kicking around.

And procurement reform is like reforming other things, like reforming Congress and like reforming the Presidential primary system, you never know exactly what you have until you put it in place and try it. And then maybe you do not like what you have but there you are. It is a very, very difficult issue to deal with.

[Informal discussion held.]

Mr. **Dickinson**. Let me ask a question. Do we have any sort of assurance now from the leadership that we can get back up to bat on Tuesday?

The **Chairman**. Yes.

Mr. **Dickinson**. I thought Foreign Aid or Foreign Affairs Committee——

The **Chairman**. Foreign Affairs is breathing down on our neck but they are waiting until we get finished.

Mr. **Dickinson**. So we can go on sequentially——

The **Chairman**. Yes.

Mr. **Dickinson** [continuing]. If we have to go over until Tuesday?

The CHAIRMAN. I hate to go over another weekend because amendments will, we will have waded through a whole bunch of procurement amendments and then we will come back and we still face the same number again is what worries me.

Mr. STRATTON. Mr. Chairman, has the Rules Committee designated a first amendment? There was some discussion there in the morning.

The CHAIRMAN. Yes. The amendment, they made in order an amendment that would bring the bill in conformance with the budget resolutions. Just that one.

Mr. BENNETT. What does that do to my amendment about the $4 billion?

The CHAIRMAN. I do not know. You have to ask them.

Mr. BENNETT. I have asked them. They did not tell me. But I thought maybe you could tell me.

The CHAIRMAN. All right, any other? Dennis?

Mr. HERTEL. Just let me go back. I am not going to belabor the reform discussion, and it is going to be discussed on the floor I am sure at length next week. Let me point out that Mr. Nichols and Mr. Hopkins and I yesterday with staff worked out an amendment to his and agreed to as regarding that discussion we have about criminal provisions. And we spent a lot of time discussing it and reaching the right conclusion.

A lot of the bills out there I think are from people that are inexperienced. A lot of the amendments to the DOD authorization have been things that have been discussed a lot. I am willing to discuss any of the amendments that are in the package of my task force and ask for suggestions and improvements.

But if the attitude is we did not do it in committee and we did not pass it in committee and therefore it cannot be a good idea then I think that ends that kind of discussion and it won't be the best amendment or the best final authorization. So I am open to that.

The CHAIRMAN. Fair point.

It is not that we have to pass it here in order to make it a good amendment. But I think that we have at least on these three areas had good discussions. And I would feel comfortable with whatever happens in these areas because we know something about it. And indeed there will be amendments to the amendments. And those, let's argue those out and fight those out on the floor, that is fine.

I just worry about something coming in from totally some other area that we have not discussed or people have not looked at. There is——

Mr. HERTEL. Well, I support the Bennett and Nichols bill. Let me say briefly, that I think maintains the credibility of the committee. You say some are bad, others are good.

The CHAIRMAN. Agreed.

Mr. HERTEL. I think the House just as the Senate are going to want to pass some reform measures on the floor.

The CHAIRMAN. But to give you an idea of the revolutionary changes being proposed there are some bills that say we ought to take all of the procurement out of the services and create a civilian procurement agency that buys all the stuff.

Well, I mean dealing with that as an amendment on a defense bill, you know, after kind of a chaotic debate on the floor, I mean I do not know whether that is a good idea or not. But I sure would think we ought to look at that and think about it a lot more before you vote on something like that. I mean, that is the kind of thing that worries me.

Why don't we proceed. Let me turn the chair over to the gentleman from Florida now, Charlie Bennett.

## STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE FROM FLORIDA, CHAIRMAN, SEAPOWER AND STRATEGIC AND CRITICAL MATERIALS SUBCOMMITTEE

Mr. **Bennett**. OK. This relates to the bill H.R. 2554. My statement is before you but I think it is worth reading it.

Mr. Chairman, the Subcommittee on Seapower and Strategic and Critical Materials, by a rollcall of 12 to 2, voted on June 11, 1985, to report H.R. 2554, the "Defense Procurement Conflict of Interest Act" with an amendment in the nature of a substitute, to the full committee and recommend that the full committee report the bill favorably to the House.

Mr. Chairman, the bill as amended has the following features:

First, coverage. The bill would cover all DOD personnel, military and civilian, with significant procurement responsibilities for contracts of $100,000 or more. The Secretary of Defense would have the authority, in consultation with the Director of the Office of Government Ethics, to exempt from coverage by the bill individuals serving in positions if the position involved responsibility with so many contractors that the ability to attract or retain qualified individuals was hampered.

Second, limitations. The bill would prohibit the acceptance of compensation from a contractor by an individual who has had significant procurement responsibility for the government with respect to that contractor, if the responsibility occurred within 2 years prior to separation, for a period of 2 years after separation from government service.

That's the guts of the bill.

Penalties. For an individual offering or accepting prohibited compensation—$10,000 and/or 1 year of imprisonment.

A fine on the contractor of $100,000 or three times compensation paid if the contractor knowingly violates the prohibition. For failure by a contractor to file a report—$10,000.

Required reports. Contractors with a contract in excess of $100,000 would be required to file an annual report listing individuals who have been given compensation in the past year and who have left DOD within the previous 2-year period.

Effective Dates. Contractor reports would be required starting in 1987 covering compensation starting in 1986. Individuals in the employment of DOD after April 1, 1986 would be subject to the limitations if employed in a covered position in the 2-year period prior to their separation from Government service.

Miscellaneous provisions. DOD employees with significant procurement responsibilities would be required to report contacts about employment and disqualify themselves from all participation in the performance of procurement functions relating to the contractor until the employment contact is terminated.

Individuals could seek an opinion from the Office of Government Ethics about contemplated employment with a contractor. The Office of Government Ethics would be required to conduct annual random reviews of contractor reports filed under the act.

Mr. Chairman, there is clearly a public perception that the defense procurement process has been undermined by individuals who have moved from positions of responsibility in the Government to employment with defense contractors.

In hearings, we received testimony that the lack of confidence in the process extends to present Government employees that have been disillusioned by seeing repeated instances of former colleagues going to work for contractors that they were formerly responsible for contracting with or overseeing.

In light of these problems, there is a strong consensus in the subcommittee that legislation is necessary to restore public confidence in the defense procurement process. However, the process of shaping legislation to correct the identified problems has been a difficult one.

The subcommittee debated a number of amendments to the bill that would have had the effect of narrowing the coverage of the bill and which were rejected.

The subcommittee also considered an amendment to delete the provision to allow the Secretary of Defense in consultation with the Director of the Office of Government Ethics to exempt individuals under certain circumstances. The subcommittee also rejected that amendment which was offered by the chairman and will be offered again by me in a few minutes to strike that section of the bill.

Mr. Chairman, the bill that I bring before the committee is seen as still having some imperfections by some on the subcommittee including myself. But each member's amendments were given full consideration. The product before you represents the result of that process, and the full committee can now make any changes that it feels appropriate.

[Statement of Mr. Bennett follows:]

## STATEMENT OF THE HONORABLE CHARLES E. BENNETT

## CHAIRMAN, SEAPOWER SUBCOMMITTEE

## THURSDAY, JUNE 13, 1985

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Mr. Chairman, the bill as amended has the following features:

COVERAGE--The bill would cover all DOD personnel, military and civilian, with significant procurement responsibilities for contracts of $100,000 or more. The Secretary of Defense would have the authority, in consultation with the Director of the Office of Government Ethics, to exempt from coverage by the bill individuals serving in positions if the position involved responsibility with so many contractors that the ability to attract or retain qualified individuals was hampered.

LIMITATIONS--The bill would prohibit the acceptance of compensation from a contractor by an individual who has had significant procurement responsibility for the government with respect to that contractor, if the responsibility occurred within two years prior to separation, for a period of two years after separation from government service.

PENALTIES--For an individual offering or accepting prohibited compensation--$10,000 and/or one year imprisonment.

A fine on the contractor of $100,000 or three times compensation paid if the contractor knowingly violates the prohibition. For failure by a contractor to file the required reports-$10,000.

REQUIRED REPORTS--Contractors with a contract in excess of $100,000 would be required to file an annual report listing individuals who have been given compensation in the past year and who have left DOD within the previous two year period.

EFFECTIVE DATES--Contractor reports would be required starting in 1987, covering compensation paid in 1986. Individuals in the employment of DOD after April 1, 1986 would be subject to the limitations if employed in a covered position in the two year period prior to their separation from government service.

MISCELLANEOUS PROVISIONS--DOD employees with significant procurement responsibilities would be required to report contacts about employment and disqualify themselves from all participation in the performance of procurement functions relating to the contractor until the employment contact is terminated. Individuals could seek an opinion from the Office of Government Ethics about contemplated employment with a contractor. The Office of Government Ethics would be required to conduct annual random reviews of contractor reports filed under the act.

Mr. Chairman, there is clearly a public perception that the defense procurement process has been undermined by individuals who have moved from positions of responsibility in the government to employment with defense contractors. In hearings we received testimony that the lack of confidence in the process extends to present government employees that have been disillusioned by seeing repeated instances of former colleagues going to work for contractors that they were formerly responsible for contracting with or overseeing. In light of these problems, there is a strong consensus in the subcommittee that legislation is necessary to restore public confidence in the defense procurement process. However, the process of shaping legislation to correct the identified problems has been a difficult one. The subcommittee debated a number of amendments to the bill that would have had the effect of narrowing the coverage of the bill and which were rejected. The subcommittee also considered an amendment to delete the provision to allow the Secretary of Defense, in consultation with the Director of the Office of Government Ethics, to exempt individuals under certain circumstances. The subcommittee also rejected that amendment, which was offered by the Chairman and will be offered again by me in a few minutes.

Mr. Chairman, the bill that I bring before the committee is seen as still having some imperfections by some on the subcommittee, including the myself. But each member's amendments were given full consideration. The product before you represents the result of that process and the full committee can now make any changes it feels appropriate. This completes my report.

BENNET127

## AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2554
## APPROVED BY THE SEAPOWER SUBCOMMITTEE ON JUNE 11, 1985

Strike out all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ``Defense Procurement Conflict of Interest Act''.

**SEC. 2. CONFLICT-OF-INTEREST IN DEFENSE PROCUREMENT.**

(a) LIMITATIONS ON ACCEPTANCE OF COMPENSATION.--(1) An individual who is a former officer or employee of the Department of Defense or a former or retired member of the Armed Forces who during the two-year period preceding the individual's separation from service in the Department of Defense had significant responsibilities for a procurement function with respect to a Government contractor may not accept compensation from that contractor for a period of two years following the individual's separation from service in the Department of Defense.

(2) Whoever knowingly violates paragraph (1) shall be fined not more than $10,000 or imprisoned for not more than one year, or both

(3) An individual who knowingly offers or provides any compensation to an individual the acceptance of which is or

would be in violation of paragraph (1) shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) LIMITATIONS ON CONTRACTORS.--(1) Each contract for procurement of goods or services entered into by the Department of Defense shall include a provision under which the contractor agrees not to provide compensation to an individual if the acceptance of such compensation by such individual would violate subsection (a)(1).

(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of--

(A) $100,000; or

(B) three times the compensation paid by the contractor to the individual in violation of such contract provision.

(c) REPORTING OF EMPLOYMENT CONTACTS.--(1) If an officer or employee having significant responsibilities for a procurement function with respect to a Government contractor contacts, or is contacted by, the contractor regarding future compensation of the officer or employee by the contractor, the officer or employee shall--

(A) promptly report the contact to the officer or employee's supervisor and to the designated ethics official of the agency in which the officer or employee is serving;

(B) promptly report (as part of the report under subparagraph (A) or as a separate report) when contacts with the contractor concerning such compensation have been terminated without agreement or commitment to future compensation of the officer or employee by the contractor; and

(C) disqualify himself from all participation in the performance of procurement functions relating to contracts with that contractor until a report described in subparagraph (B) is made with respect to such contacts.

(2) If an officer or employee serving in a position with respect to which an exemption is in effect under subsection (f)(2) fails to disqualify himself as required by paragraph (1)(C) with respect to procurement functions relating to contracts of a contractor, subsections (a) and (b) apply to acceptance of compensation by that officer or employee from that contractor.

(d) CONTRACTOR REPORTS.--(1)(A) Each contractor subject to a contract term described in subsection (b) shall submit to the Secretary of Defense not later than April 1 of each year a report covering the previous calendar year. Each such report shall list the name of each individual (together with other information adequate for the Government to identify the individual) who is a former Department of Defense officer or employee, or a former or retired member of the Armed Forces, who--

(i) was provided compensation by that contractor during the preceding calendar year, if such compensation was provided within two years after such officer or employee left service in the Department of Defense; and

(ii) had significant responsibilities for a procurement function during the individual's last two years of service in the Department of Defense.

(B) Each such listing shall--

(i) show each agency in which the individual was employed or served on active duty during the last two years of such individual's service in the Government;

(ii) show the individual's job titles during the last two years of such individual's service in the Government;

(iii) contain a full and complete description of the duties of the individual during the last two years of such service; and

(iv) contain a description of the duties (if any) that the individual is performing on behalf of the contractor.

(C) The first such report shall be submitted not later than April 1, 1987.

(2) The Secretary of Defense shall review each report under paragraph (1) to assess the report for accuracy and completeness and for the purpose of identifying possible violations of subsection (a) or (b) or paragraph (1). The Secretary shall report any such possible violation to the Attorney General.

(3) Whoever fails to file a report required by paragraph (1) shall be fined not more than $10,000.

(e) REVIEW BY DIRECTOR OF OFFICE OF GOVERNMENT ETHICS.--The Director of the Office of Government Ethics shall have access to the reports submitted under subsection (d)(1) and shall conduct an annual random review of the reports for violations of subsections (a), (b), and (d)(1). The Director shall submit a report to Congress not later than October 1 of each year on the operation of this section, including the findings of the Director based on the examination of reports for the preceding calendar year.

(f) COVERED PROCUREMENT FUNCTIONS.--(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense--

(A) shall identify the procurement functions covered by this section and the organizational positions currently performing such functions; and

(B) shall provide a list of such functions and positions to Congress and to the Director of the Office of Government Ethics and publish such list in the Federal Register.

(2) If the Secretary of Defense determines that the duties inherent in an organizational position identified under paragraph (1) involve significant responsibilities for procurement functions with so many contractors that implementation of subsections (a) and (b) with respect to individuals serving in that position would seriously hamper the ability of the Department of Defense to obtain the services of highly qualified individuals in that position, the Secretary, with the concurrence of the Director of the Office of Government Ethics, may exempt individuals serving in such position from the provisions of such subsections by reason of service in such position.

(g) EXCLUSION.--This section does not apply--

(1) to a contract for an amount less than $100,000; or

(2) to compensation of an individual by an entity that did not have a Department of Defense contract in excess of $100,000 at the time the individual had significant responsibilities for a significant procurement function with respect to a contract with that entity.

(h) ADVISORY OPINIONS FROM OFFICE OF GOVERNMENT

ETHICS.--(1) An individual who is considering the propriety of accepting compensation that might place the individual in violation of subsection (a) may, before acceptance of such compensation, apply to the Director of the Office of Government Ethics for advice on the applicability of this section to the acceptance of such compensation.

(2) An application under paragraph (1) shall contain such information as the Director requires.

(i) WAIVER OF OTHERWISE APPLICABLE FINES UNDER TITLE 18.--The provisions of section 3623 of title 18, United States Code, shall not apply to maximum fines applicable under subsections (a)(2), (a)(3), and (d)(3).

(j) DEFINITIONS.--For purposes of this section:

(1) The term ``compensation'' includes any payment, gift, benefit, reward, favor, gratuity, or employment valued in excess of $100 at prevailing market price, provided directly, indirectly, or through a third party.

(2) The term ``contractor'' means any person, partnership, corporation, or agency (other than the Federal Government or the independent agencies thereof) that contracts to supply the Department of Defense with goods or services. Such term includes any parent, subsidiary, or affiliate thereof.

(3) The term ``procurement function'', with respect to a contract, means any acquisition action relating to

the contract, including negotiating, awarding, administering, approving contract changes, costs analysis, quality assurance, operational and developmental testing, technical advice or recommendation, approval of payment, contractor selection, budgeting, auditing under the contract, or management of the procurement program.

(4) The term ``Armed Forces'' means the Army, Navy, Air Force, and Marine Corps and includes the Coast Guard when the Coast Guard is operating as a service in the Navy.

(k) SEPARATION OF MEMBERS OF ARMED FORCES.--For the purposes of this section, a member or former member of the Armed Forces shall be considered to have been separated from service in the Department of Defense upon such member's discharge or release from active duty.

(l) TRANSITION.--(1) This section--

(A) does not preclude the continuation of employment that began before the effective date of this section or the acceptance of compensation for such employment; and

(B) does not, except as provided in paragraph (2), apply to an individual whose service with the Department of Defense terminates before April 1, 1986.

(2) Paragraph (1)(B) does not preclude the application of this section to an individual with respect to service in the Department of Defense by such individual on or after April 1, 1986.

(m) EFFECTIVE DATE.--This section shall take effect on January 1, 1986.

Mr. Bennett. At this time, I offer an amendment to the subcommittee report to strike the language of the so-called Spence amendment and to make a conforming change. I ask that the amendment be distributed at this point. I will read it while it is being distributed. It is very brief.

The amendment offered by Mr. Bennett to the amendment in the nature of a substitute. "Strike out paragraph (2) of section 2(f)," the Spence amendment so-called, "(page 6, lines 4 through 15.)" And then the conforming amendment, "Strike out paragraph (2) of section 2(c) (page 3, lines 15 through 21.)"

Now if I can briefly state my feelings about it, and then leave it open to everybody.

Mr. Stratton. Would the gentleman repeat that. That was a little too fast.

Mr. Bennett. Well, the amendment is going to be offered to you. It is going to be passed out to you. It will be passed to you by the time that I make my brief remarks. Well, I will read it to you again.

"Strike out paragraph (2) of section (2)(f) (page 6, lines 4 through 15.)" Well, I cannot discuss it and read it at the same moment. I am going to discuss it in just a minute. He asked me to repeat it, so I am repeating it.

"Strike out paragraph (2) of section (2)(c) (page 3, lines 15 through 21." That is just a conforming amendment. The guts of it is page 6, lines 4 through 15.

Now I am not going to occupy a lot of your time, because it has been discussed and thought out by a lot of you people here, and nobody is going to fall out with anybody whatever they do. But I do want to say what I feel about it.

The simple bill which I originally introduced maybe 10 or 15 years ago is the mother of this bill. And all it said was that if a person did substantial activity with regard to finalizing a contract with a contractor in the last 2 years of his service with the Government, he could not then thereafter for 2 years go to work for that contractor.

It is a very meritorious and very simple provision. Now it has been perfected but not injuriously so until you get in my opinion, and I consider it to be injurious, to have this language which I want to strike, and I will tell you why I feel that.

The real reason for this bill are the very top-flight people like the Secretary of the Navy, like the Assistant Secretary of the Navy. That is what you are getting at. They are the people who have all of these abilities to handle lots of contracts, and they are the ones who have abused it.

Secretary Hidalgo went out after handling a $500-million problem with the Navy, and within months he was employed by General Dynamics. And it is true that he is a lawyer, but I think that he testified that it was $60,000 or $70,000 or something like that that he received in that employment. He is a fine man. I like Secretary Hidalgo. And he is a fine man. He is a good man, and I think in his own view he did not do anything wrong. And we are not going to affect him at all. This is not ex post facto.

And at the same time, Mr. Sawyer, who was Assistant Secretary of the Navy in charge of ships and for procuring ships, he went out and got employed after handling the same amount of material in an arrangement with General Dynamics, he went out and took a high ranking job with that company.

Well, that is just disastrous. I mean it is awful to have that occur. This bill is not designed to nit-pick a lot of little people. If you want to take off some of the people on the bottom, that is all right. But the top people, you certainly do not want to get rid of.

And this amendment that I have offered to this bill takes away the ability to eliminate those top-flight people who have that tremendous responsibility with regard to contracts in the Navy, and also in other branches of the service.

Now you cannot evade it. The evil exists, and it ought to be ended. Now we are trying to do it by this law. And I hope that you will support it, and support the provision of striking this provision from the bill. Because if you leave this provision in the bill, I would say that 95 percent of the merit of this bill will go. I will still vote for it, but it is a nothing. And you have struck 95 percent of its value if you agree to leave that language in. And I hope that you will agree to my amendment to strike that language. That is all that I want to say.

Mr. STRATTON. Would the gentleman yield to me?

Mr. BENNETT. I yield, yes.

Mr. STRATTON. It seems to me that there ought to be in this legislation a clear definition of significant responsibilities for a procurement function with respect to a government contractor. I think that you have got to have some markstone to who is affected. Obviously, Sawyer is the kind of guy that you are talking about, and Hidalgo. But they are top people, and how far down does significant come.

Mr. BENNETT. Well, that does not have anything to do with my statement.

Mr. STRATTON. I know that it does not have anything to do with the amendment.

Mr. BENNETT. I would be glad to discuss it, but it has nothing to do with my amendment. It has nothing to do with my amendment at all. If you want to amend it to get into greater details about substantial procurement responsibility, that is fine, but that is another section of the bill.

Mr. STRATTON. Well, should we not define it in the bill?

Mr. BENNETT. Well, I yielded to you to ask a question, and I am going to discuss it. That was discussed at length in the subcommittee. And those of us who were lawyers on the subcommittee remember that there is a very good publication by West Publishing Co. called Words and Phrases which has thousands of cases defining words like this. And all you have to do is look up those words and phrases. You look up a precise word, substantial procurement responsibility, and you will find it there, and you will find many, many cases which have defined it. And that is the best way to leave it.

Now if you want to ask for an additional definition to that phrase, you will not find me fighting that very much, but it has absolutely nothing to do with this amendment. And I would suggest that we would get along further if we restrict our conversation to this amendment first.

Mr. KASICH. Would the gentleman yield?

Mr. BENNETT. Let us handle this amendment, and then go on to any other perfections you want to have in the bill.

Mr. KASICH. Would the gentleman yield?

Mr. BENNETT. Yes, I would be glad to yield.

Mr. KASICH. On page 6, that section (2). If instead of saying that—I think that what they are trying to get at, Mr. Bennett, in this section is that there are some people who we may want to have serve at the very highest levels in the Pentagon, who may deal with six or seven different contractors because of the nature—I do not know, who would be a good example of that?

Mr. BENNETT. That is a good sentence except for the "you." They are the very people that I want to get rid of.

Mr. KASICH. Dr. LeLauer, OK.

Mr. BENNETT. Well, Mr. Sawyer.

Mr. KASICH. Well, I do not know.

Mr. BENNETT. Well, you ought to know Mr. Sawyer, because he is being sued right now in criminal law, that he is violating criminal law.

Mr. KASICH. I do not know what his title was. But what I am driving at, Mr. Bennett, is if we were to change this language in such a way and say that rather than the Secretary determining an organizational position, but have the Secretary determine who the person is and exempt that person, and then have a reporting requirement.

Mr. BENNETT. Well, let me address that. I judge that you are not a lawyer.

Mr. KASICH. No, I am not a lawyer.

Mr. BENNETT. I would not think that you would be a lawyer. Because there is nobody who has ever been a lawyer that ever would want to have somebody be able to waive under a statute a criminal responsibility. This is a criminal law. And you should never have anybody be able to jerk the rug out from somebody and say, well, you are Mr. John Brown or somebody, or you are Assistant Secretary, or something like that, we are going to remove you.

Criminal laws ought to be very specific. And therefore, that would be a grave mistake to do that. But you see, I am not trying to take care of those people. Those are the kind of people that I am trying to get at. That is what this is about, trying to get rid of people who are Secretaries and Assistant Secretaries who are in a position to really make a settlement for a billion bucks with a corporation. That is the kind of people that we are trying to get at, so I do not favor that.

Mr. KASICH. Well, let me say this.

Mr. BENNETT. Let me say to you that I have offered an amendment. If you want to offer amendments to improve the amendment that I have offered, that is your course. But if you are ever going to get rid of this, we are going to have to be precise as to what you are doing. I have offered an amendment which is to strike that section.

If you are saying that you would prefer to do something else like amend my amendment to say that you have some language that you would like to put in, that would be a proper parliamentary thing to do. But we are now discussing my amendment which strikes this language. It gets rid of the problem.

Mr. KASICH. If the gentleman would yield for one more question.

If we were just theoretically, just theoretically, to add in here that if the Secretary determines that the gentlelady or gentleman *x* is critical and should be exempted, and then we force the Secretary to report that to the Congress; and then in addition to that, we have a provision in here which I think Mr. Spratt originally had said if that person then is contacted by a prospective employer and they do not report it and drop out of all negotiations, then they are subject to a criminal penalty, then do we not get at what you are trying to get at and still take care of the concerns?

Mr. BENNETT. Expressed in one word, no. It is designed to get at people in a criminal law that are doing something that is improper. And if you allow people to exempt people by name, you are going to have a great problem.

Mr. MAVROULES. Mr. Chairman.

The CHAIRMAN. Mr. Mavroules.

Mr. MAVROULES. Just for a moment, Mr. Chairman. I am going to attack this in a different way. I think that some reform is absolutely necessary. Let me just ask this question.

If we are going to put forth legislation that is going to be binding, are we in any way creating a disincentive perhaps for others who want to come into Government recognizing, of course, that there are certain limitations under new legislation, are we going to somehow shut off that qualified person who can do something for this country? I just ask the question.

Mr. BENNETT. Well, I could try to answer you. No. 1, you probably would cut off some people. But I want to say to you that we would be much better off if they had been cut off in the past, because they have been the source of most of our problems.

Mr. CARNEY. If the gentleman from Massachusetts would yield, I would like to have an opportunity to answer that question. I think that the answer to your question is an emphatic yes. We would discourage any qualified person from entering into Government service to serve their country. What we would do is we would perpetuate mediocrity in DOD, and we would criticize them as a Congress for the next 20 years.

And we would tell them, why can you not shape up your act down there. And the reason is that you cannot attract good people. And I will tell you that no corporation will hire anybody coming out of DOD for fear that they are going to be involved in criminal penalties, and be thrown in jail, and fined in excesses that are unbelievable. My answer to you is emphatically yes.

Mr. MAVROULES. Thank you.

The CHAIRMAN. Mr. Spratt.

Mr. SPRATT. Mr. Bennett, we were talking just a moment ago about Mr. Packard coming back and being Chairman of the Commission on Procurement.

What would happen to a David Packard if he were offered the position of Deputy Secretary of Defense and he wished to take it, could he then go back to his own company that he had formed and had been with for years and years?

Mr. BENNETT. Well, the problem is, and you asked me the question and I will answer this, you have said nothing about what Mr. Packard was going to do. If Mr. Packard were in fact going to make a settlement for a billion bucks or something like that with General Dynamics and agree on the part of the Government that there would be such an agreement and we waive a half a billion dollars of their obligation or something like that; then yes, he would not be able to go to work for General Dynamics within 2 years after he got out.

Mr. SPRATT. He did in fact make a settlement with Lockheed Aircraft Corp. when he was Deputy Secretary of Defense, and I am sure that Lockheed somewhere bought Hewlett-Packard components, spare parts, computers.

Mr. BENNETT. That is not retroactive. This law is not retroactive.

Mr. SPRATT. Oh, I understand that, I understand that.

Mr. BENNETT. You do not think that that is virtuous, do you?

Mr. SPRATT. Well, I do not think that David Packard would want to take the risk of violating this act.

Mr. BENNETT. Well, I do not think he would either. So what?

Mr. SPRATT. So it precludes people of his caliber.

Mr. BENNETT. It only precludes him doing something. It does not preclude people of his character. It precludes him from negotiating with the contractor in setting a contract, in concluding a contract, and then turning around and taking a job within 2 years after he gets out with that company, which I think is very unlikely with Mr. Packard.

I think I know Mr. Packard about as well as you do, and he is a highly ethical man of great capacity, and I am sure that he would not do a thing of that nature.

The CHAIRMAN. Is there any other discussion?

[No response.]

The CHAIRMAN. The vote is on Mr. Bennett's amendment in effect to strike the Spence language from the bill that we have before us, on the desk before us.

All in favor of the Bennett amendment to strike, say aye.

[A chorus of ayes.]

The CHAIRMAN. Opposed.

[A chorus of nays.]

The CHAIRMAN. In the opinion of the Chair, the noes have it.

Mr. BENNETT. I ask for a recorded vote.

The CHAIRMAN. We will have a recorded vote. Go ahead.

Mr. WINCUP. Mr. Aspin.

The CHAIRMAN. No.

Mr. WINCUP. Mr. Price.

Mr. PRICE. No.

Mr. WINCUP. Mr. Dickinson.

Mr. DICKINSON. No.

Mr. WINCUP. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. WINCUP. Mr. Whitehurst.

Mr. WHITEHURST. No.

Mr. WINCUP. Mr. Stratton.

Mr. STRATTON. No.

Mr. WINCUP. Mr. Spence.

Mr. SPENCE. No.
Mr. WINCUP. Mr. Nichols.
Mr. NICHOLS. Aye.
Mr. WINCUP. Mrs. Holt.
Mrs. HOLT. No.
Mr. WINCUP. Mr. Daniel.
Mr. DANIEL. No.
Mr. WINCUP. Mr. Hillis.
Mr. HILLIS. No.
Mr. WINCUP. Mr. Montgomery.
[No response.]
Mr. WINCUP. Mr. Badham.
Mr. DICKINSON. No by proxy.
Mr. WINCUP. Mr. Dellums.
Mr. DELLUMS. Aye.
Mr. WINCUP. Mr. Stump.
Mr. STUMP. No.
Mr. WINCUP. Mrs. Schroeder.
Mrs. SCHROEDER. Aye.
Mr. WINCUP. Mr. Courter.
Mr. COURTER. No.
Mr. WINCUP. Mrs. Byron.
[No response.]
Mr. WINCUP. Mr. Hopkins.
[No response.]
Mr. WINCUP. Mr. Mavroules.
Mr. MAVROULES. Aye.
Mr. WINCUP. Mr. Davis.
[No response.]
Mr. WINCUP. Mr. Hutto.
Mr. HUTTO. No.
Mr. WINCUP. Mr. Kramer.
Mr. KRAMER. No.
Mr. WINCUP. Mr. Skelton.
[No response.]
Mr. WINCUP. Mr. Hunter.
[No response.]
Mr. WINCUP. Mr. Leath.
[No response.]
Mr. WINCUP. Mr. Hartnett.
Mr. DICKINSON. No by proxy.
Mr. WINCUP. Mr. McCurdy.
[No response.]
Mr. WINCUP. Mr. Martin.
Mr. DICKINSON. No by proxy.
Mr. WINCUP. Mr. Foglietta.
Mr. BENNETT. Aye by proxy.
Mr. WINCUP. Mr. Kasich.
Mr. KASICH. No.
Mr. WINCUP. Mr. Dyson.
Mr. DYSON. Aye.
Mr. WINCUP. Mr. Carney.
Mr. CARNEY. No.
Mr. WINCUP. Mr. Hertel.

Mr. **Hertel**. Aye.

Mr. **Wincup**. Mrs. Martin.

Mr. **Dickinson**. No by proxy.

Mr. **Wincup**. Mrs. Lloyd.

Mrs. **Lloyd**. No.

Mr. **Wincup**. Mr. Bateman.

Mr. **Bateman**. No.

Mr. **Wincup**. Mr. Sisisky.

Mr. **Sisisky**. No.

Mr. **Wincup**. Mr. Sweeney.

Mr. **Sweeney**. No.

Mr. **Wincup**. Mr. Ray.

Mr. **Ray**. No.

Mr. **Wincup**. Mr. Blaz.

Mr. **Blaz**. No.

Mr. **Wincup**. Mr. Spratt.

Mr. **Spratt**. No.

Mr. **Wincup**. Mr. McCloskey.

Mr. **McCloskey**. Aye.

Mr. **Wincup**. Mr. Ortiz.

Mr. **Ortiz**. Aye.

Mr. **Wincup**. Mr. Darden.

Mr. **Darden**. No.

Mr. **Wincup**. Mr. Robinson.

Mr. **Robinson**. Aye.

Mr. **Wincup**. Mr. Bustamante.

Mr. **Bustamante**. Aye.

Mr. **Wincup**. Mr. Hunter.

Mr. **Hunter**. No.

Mr. **Wincup**. Mr. Skelton.

The **Chairman**. Ike, are you recorded on this one?

Mr. **Skelton**. Aye.

Mr. **Wincup**. Mr. Skelton votes aye.

The **Chairman**. Beverly Byron.

Mrs. **Byron**. No.

Mr. **Wincup**. Mrs. Byron votes no.

Mr. Chairman, 29 members in the negative, and 13 in the affirmative.

The **Chairman**. The amendment is not agreed to.

Are there other amendments to the bill?

Mrs. **Byron**. I have an amendment, Mr. Chairman.

The **Chairman**. Sam, are you seeking recognition?

Mr. **Stratton**. Yes.

The **Chairman**. Sam Stratton was talking about an amendment a little earlier, Beverly. Sam, go ahead.

Mr. **Stratton**. I have an amendment that I have just written out, so it is not printed. But at the top of page 2 of section 4 of the bill, it would be added as follows. "The provisions of section 2(a) shall not apply to personnel in grade O–5 or GS," and I am not sure which is the equivalent grade, "or below." So this does not take in lieutentant commanders or captains in the Army, and that kind of thing.

I think that as Mr. Bennett has indicated, he wants to get the big fry, and I think that this would do very much the same thing that Mr. Spence tried to do. But I think that this might pin it down a little bit more clearly.

Mr. SISISKY. Would the gentleman yield?

Mr. STRATTON. I would be glad to, yes.

Mr. SISISKY. I think Mrs. Byron has an amendment that may be better than that. You are leaving it too open. I think that we ought to hear her amendment first.

Mr. STRATTON. Fine, fine, I would be glad to.

The CHAIRMAN. Maybe she has got a substitute.

Beverly, can you explain to us what your amendment is?

Mrs. BYRON. Yes, sir, I think. Let me say does everybody have a copy of my amendment? Here it comes.

Basically, what this amendment does is it limits the coverage to the people who are involved with the decision level on an ongoing basis. The program manager would be precluded. The supervisor of a program would be OK. Let us use an example of the B-1 program, for example. The B-1 program managers would be precluded to deal with say the 30, or 35, or 40 different contractors that are involved. But he would not be precluded from going with somebody who was not involved in the B-1 contract.

Basically, what we are attempting to do is to define in a little bit better managed area those people that should be covered.

The CHAIRMAN. May I ask a question about your amendment.

Does your amendment then imply that anybody that is not listed in it is not—that the bill does not affect anybody who is not listed in your list, is that correct?

Mrs. BYRON. They could be added, but it would have to be within the primary area. Their responsibility jurisdiction would have to be within the primary area.

The CHAIRMAN. I mean one of the questions that was raised by the bill as it was reported out of committee, as I understood it just talking to people about it, was whether the bill then would apply to everybody even though they were not specifically mentioned in the bill. I think that we talked about that.

Was that not a Carney amendment in the substitute, and does this not take care of your problem?

Mr. SISISKY. That is similar to my amendment; yes, Mr. Chairman.

The CHAIRMAN. This helps in your case. You want to make sure that everybody who is not listed, that the bill does not apply to people who are not specifically covered?

Mr. SISISKY. That is correct, Mr. Chairman. And Mrs. Byron's amendment is the identical amendment.

The CHAIRMAN. Let us have discussion on it.

Mr. DICKINSON. Would you yield for a question?

The CHAIRMAN. All right.

Mr. DICKINSON. Would the gentlelady from Maryland yield?

The CHAIRMAN. Mrs. Byron, would you yield to Mr. Dickinson?

Mrs. BYRON. I will be glad to yield to Mr. Dickinson.

Mr. DICKINSON. I am asking this to try to help me and perhaps all of us focus on the problem, and what your amendment would do toward it. Now take the C-130 or B-1, all right. The B-1 is made by Rockwell, the engines are made by General Electric. The auxiliary power unit is made by Garrett, and the tires I guess are made by U.S. Royal.

So my question is would the Secretary of Defense be precluded, would the Secretary for R&D be precluded, would the Secretary of the Air Force be precluded?

Mrs. **Byron**. No. The only one that would be precluded would be——

Mr. **Dickinson**. Who has the decisionmaking responsibility and how far down the line does it go?

Mrs. **Byron**. The program manager.

Mr. **Dickinson**. Oh.

Mrs. **Byron**. The program manager and whoever made the award of the contract or approved the contract.

Mr. **Dickinson**. Well, you see, that goes back to the Secretary level. That would go back to the Secretary level. And I am not arguing against it. I am trying to point out what the problem is in deciding what we do.

Mrs. **Byron**. What we are trying to do is to make it a little clearer those individuals that we are trying to identify. The thing that concerned me with the main piece of legislation was the broad aspect of it. And I think that it bothers me greater that we are going to end up with losing a tremendous talent of individuals because of this type of language and this type of legislation.

Mr. **Dickinson**. If you would yield just briefly further. The general counsel of the Department Defense has stated exactly what you are trying to correct in his letter to the chairman. In the first paragraph of the second page, he is talking about the bill.

He says:

> The bill does not define the term significant responsibilities. Even routine and menial tasks may come within its scope if they are necessary contract administration procedures. For example, approval of each individual's voucher would be significant if this step were completed before the government made final payment to the contractor.

So this is the part of the problem that we are trying to avoid. And I think perhaps that yours goes some distance that way, but I just do not know if it is far enough.

Mrs. **Byron**. This only addresses the source selection aspect.

Mr. **Dickinson**. Thank you.

The **Chairman**. Mr. Bennett.

Mr. **Bennett**. If I could just briefly say this. Of course, that letter that you got was addressed to Mr. Aspin. Anyway Mr. Cox' letter is not a very credible letter. I am quoting from his letter. Mr. Cox states that, "The public has been well protected against the potential influences of conflicting public and private interests by existing law."

Where is he living? He must live down in Tahiti or somewhere. I mean this is a national scandal. The country is upset about it, and they have every reason to be upset about it. So his whole letter, in my opinion, is fraught with that sort of thing.

In other words, he is nit-picking everything that he can nit-pick. It takes a little courage to go forward with it on the legislation. It is these kinds of people that we are referring to that have gotten into this kind of a fix. If these are the kind of people that you are trying to preserve jobs for, that is where they are.

So I, myself, feel like—oh, I would not mind taking out the bottom level of it. I am not too uptight about the bottom level. And that is what this amendment seeks to do, I guess. I think that it is a negative thing. And I, myself, think that the bill is not improved by that amendment, so I am opposed to the amendment.

Mrs. HOLT. Mr. Chairman.

The CHAIRMAN. Mrs. Holt.

Mrs. HOLT. I think the whole debate here is pointing up what a tremendous area we are getting into with this whole bill. I think that we are creating another layer of paperwork, another layer of cost in defense procurement. And there is no way that you are going to legislate morality, or virtue, or honesty.

And we are wasting our time, and we are creating something that is going to really come back to haunt us. And I think that it is a serious mistake, and that we should defeat the whole bill today right away.

[Letter dated June 10, 1985, from DOD general counsel follows:]

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON D.C. 20301

10 JUN 1985

Honorable Les Aspin
Chairman, Committee on Armed Services
House of Representatiaves
Washington, D.C. 20515

Dear Mr. Chairman:

This is to express the views of the Department of Defense on H.R. 2554, a bill "To limit conflicts of interest in defense procurement."

H.R. 2554 would forbid any Government contractor from employing a "former officer or employee of the Department of Defense or a former or retired member of the uniformed services" who had "significant responsibilities for a procurement function" related to that contractor within a two year period before departure from the Government. The employment bar would run two years after separation from Government service.

We believe H.R. 2554 is unnecessarily broad and urge that it not be adopted. In our opinion, the public has been well protected against the potential influences of conflicting public and private interests by the Ethics in Government Act of 1978. The Department's views on the effectiveness of the current legislation were outlined in the April 18, 1985, Joint Hearing of the Seapower and Strategic and Critical Materials Subcommittee and the Investigations Subcommittee of the Committee on Armed Services, House of Representatives. We will not reiterate the points made at that time but will emphasize our concern that any remedial legislation avoid substantially or needlessly circumscribing individual opportunities.

It is acknowledged that the movement of certain departing officers and employees into the service of the contractors with whom they worked has raised concerns in the mind of some people. These situations create appearances of impropriety. If new legislation is required, we suggest that it be narrowly crafted to focus on this area and not impose broad limitations on the employment opportunities of the vast majority of Defense procurement officials whose behavior raises no propriety issues.

The bill does not define the term "significant responsibilities." Even routine and menial tasks may come within its scope if they are necessary contract administration procedures. For example, approval of each individual voucher would be "significant" if this step must be completed before the Government may forward payment to a contractor.

Further, for want of necessary enforcement documentation, even-handed application of H.R. 2554 promises to be all but impossible. Contract files, contract administration files, audit files and similar procurement-related records ordinarily reveal the identities of some of the Government employees performing a related "procurement function," but current Government record retention rules provide for their destruction soon after the conclusion of final contract close-out and postperformance audit periods. Because these documents would provide the major source of the Government's necessary enforcement information, however, under H.R. 2554 large amounts of bulky records would have to be stored.

Even this vast expansion of the record retention system would not reliably document the participation of a large segment of affected employees. Unless an entirely new bureaucracy were established specifically to record the name of every contractor as to which each DoD officer and employee performed a proscribed "procurement function," and unless such records were maintained on each employee for the full period of his or her disqualification, there are no present means available to make all of the necessary determinations called for by the bill. Records that currently are kept by contractor name or contract number would have to be duplicated in a parallel system under the names of DoD officers and employees. Instead of improving the procurement process, as intended, implementation of the legislative proposal would add a huge, costly, paperwork burden.

Individuals who are conscientious in their desire to avoid any possibility of violating the letter or spirit of this bill may need to keep voluminous and varied individual records concerning contracts that passed through their offices. For most persons handling acquisition duties for the Government, the paperwork burden would be enormous. In addition, notwithstanding the two year pre-departure rule, the records would have to be kept for the current two-year period during an entire career of twenty or more years. While some people may know when they have begun the last two years of their employment, most cannot be certain of that date. Programs are subject to cancellation. Employees may lose their jobs through reductions in force or because of changes in personal circumstances. Thus, the recordkeeping would be a continuing requirement throughout the entire career.

The potential paperwork load could be substantially reduced, without unduly weakening the thrust of the bill, if the pre-departure recordkeeping period were shortened from two years to one year. It would facilitate the identification of those contractors with which an employee had worked during the target period if reference were made to current files only. A two-year period would require a procurement office to keep available for reference many records that otherwise would be retired.

The annual reporting requirement for contractors established by this bill could be an expensive addition to overhead costs. The time and effort required to compile the report will be reflected in costs to the Government. There are also limitations on the effectiveness of the reports themselves. Contractors will be able to identify those persons who came from Government service. However, the individual job applicant or employee will be the source of all of the other information required for the annual reports. Contractors may be reluctant to risk liability when the information can only come from parties in interest. Where contractors are willing to considering hiring former Government personnel it is inevitable that the opinion of the Office of Government Ethics (OGE) will be required in each case. This will be a burdensome requirement on that office and on the former agency of each applicant because of the documentation that must be produced to support the OGE review.

It may be difficult to determine with precision the potential scope of the postemployment limitations. Each contractor must identify all former DoD personnel within two years of their departure from the Department to whom it paid compensation (Sec. 2(c)). There also are prohibitions on payment and receipt of compensation, plus criminal and contract penalties, where such persons "had significant responsibilities for a procurement function with respect to a Government contractor . . ." (Sec. 2(a)(1)). When these provisions are read in connection with the definitions (2(h)) the scope of the coverage is enormous.

For example, the definition of "compensation" includes money "provided directly, indirectly, or through a third party." This would appear to preclude a former DoD official who is subject to the limitations from selling to the contractor. For example, he could not sell gasoline to the contractor for use in its trucks. He could not sell goods to a third party that might be resold to the contractor.

Problems also are found with the definition of "contractor," as this term includes "any parent, subsidiary, or affiliate thereof." The definition would appear to preclude employment with second or third tier subcontractors. A violation would appear to arise if a former DoD official subject to a postemployment bar was employed by a firm that became a subsidiary or affiliate of the contractor subsequent to his employment.

It is suggested that the terms be defined with more precision or, if the interpretations suggested above are not consistent with the intent of the drafters, that appropriate statements of the purpose be added to the bill or accompanying explanatory text.

If H.R. 2554 is intended to prevent favoritism by Government officers and employees for potential future private employment it misses the mark. It strikes as directly at those employees who spend their entire careers at laboratory benches and warehouse desks as it does those senior officials responsible for daily negotiating with corporate officers and making source selection decisions. We suggest that the impact of the bill be directed to those positions of most concern by establishing a minimum grade level as the threshhold. I suggest that civilians below grade level GS-13, or equivalent, and military rank of 0-4 be excluded from coverage of this legislation.

Preliminary estimates have been made of the number of positions potentially impacted by this bill. If no minimum grade level is specified, about 155,000 civilian and military positions will be covered. If coverage is limited to persons at GS grade 13, or equivalent, and military rank 04, and above, the coverage drops to about 25,400 positions.

The quality of Government procurement actions is based, to a large degree, on the skill and diligence of the individual officer and employee. It will be very difficult to attract into Government service talented individuals if postgovernment restrictions will make them unemployable. Similarly, the Government often benefits by hiring persons from industry who have extensive experience or technical expertise that is relevant to current problems. It has been our experience that the movement of qualified personnel between Government and industry is far more often a benefit to the taxpayer than it is a detriment.

The predictable effect of H.R. 2554's extraordinary scope and duration, coupled with its difficulties of accurately reconstructing prior official duties, is that current and former defense contractors will likely not risk employing former DoD officers, employees, or military members. The risk of severe penalty, via the contract as well as the criminal penalties, would discourage most contractors from any consideration of employing such persons.

We are concerned that the Department of Defense has been singled out for this legislation. Postemployment problems are not limited to this Department. It would be appropriate to provide fair and uniform treatment to all Government officers and employees who may be in positions to influence outside entities. Another advantage of such a broadened legislative scope would be the active participation of other agencies and Congressional Committees.

In addition to those noted above, there are some other shortcomings we find in H.R. 2554:

1. Sec. 2(c). The bill gives the DoD Inspector General responsibility to manage the new reporting program. This may not be an appropriate responsibility for this officer. If the Secretary of Defense is given authority to assign the responsibility to the officer or officers of his choice, the IG may maintain his role as independent monitor of compliance.

2. Sec. 2(g)(3). This provision requires the Director of the Office of Government Ethics to publish in the Federal Register a notice of each application for a determination under the Act. The reason for the notices is not apparent. They will add to the administrative burden and cost and may intrude on the personal privacy of the applicant without apparent benefit to the Government.

Finally, the Armed Services Committee of the Senate has developed an approach to this problem that has been included in the DoD Authorization Bill (S. 1106, Amend. 147). It focuses attention on the actions of officers and employees while they are with DoD, requiring recusal before discussing employment opportunities with firms they deal with officially. It also strengthens postgovernment reporting procedures and gives the Secretary of Defense authority to impose appropriate monetary penalties. Although this approach also has considerable paperwork implications we believe that it may have major impact on resolving the "perception of impropriety" problem without unduly circumscribing employment opportunities.

For the reasons stated above the Department of Defense is opposed to enactment of H.R. 2554. If new legislation is necessary, we would prefer the strengthening of the recusal and reporting requirements found in S. 1106.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

Chapman B Cox

Chapman B. Cox

The **Chairman**. Who is seeking recognition?

Mr. **Carney**. Mr. Chairman.

The **Chairman**. Mr. Carney.

Mr. **Carney**. Mr. Chairman, I would like to speak in support of the amendment. I think it goes a distance to try to clearly focus in on the types of people that would be in a position within the DOD to influence the outcome of contracts. It simply says that the Secretary of Defense shall describe and publish in the Federal Register regulations identifying those positions within the Department of Defense that have the primary duty, as their primary duty the management, direction, oversight or justification with respect to particular products and services. I think that is what we are trying to accomplish.

This is a more refined approach. It focuses. It is not scattershot. And we, without implementing this bill we will be covering 500,000 employees in the Federal Government. And we all recognize there are not a half a million people in the Federal Government involved in procurement to a significant extent to where they could be influential.

So I would hope that my colleagues would support Mrs. Byron's amendment.

The **Chairman**. Mr. Bateman.

Mr. **Bateman**. Thank you, Mr. Chairman. I, too, would urge the committee to support the amendment. And let me say in general terms the bill proceeds from a premise of a public perception that abuse, fraud, conflict of interest is the order of the day and the routine of all Department of Defense procurement. That perception may well be accurately stated. But I do not believe that the perception bespeaks the reality. I do not think that all Department of Defense employees who have anything to do with procurement are routinely, daily, frequently making judgments which are less than conscientious.

If that be the case we have a problem with the overbreadth, at the very least, of the bill as it comes to us from the subcommittee. Our staff has told us in the course of the hearings and the markup of the bill in subcommittee that its potential reach is as to as many as 476,000 employees.

The general counsel of the Department of Defense whose letter has been criticized, and in some respects I would say that it is perhaps guilty of rhetorical flourishes, but his letter limits its impact to 155,000 civilian and military positions. Well, that is a huge number of people. And the very nature of the bill requires a very detailed recordkeeping, monitoring of personnel folders, determination of who did business or had contact with whom, and the nature of the contacts they had.

The more people you add to the bill the greater the risk that the administrative burden is going to be so unmanageable that the bill will become no more than a dead letter simply because of the inability to administer it or to implement it.

Mrs. Byron's amendment has the virtue of it gets at the people who have the deeper, larger responsibility, and it does contain the number of people.

Mrs. **Holt**. Will the gentleman yield?

Mr. **Bateman**. I would be happy to yield.

Mrs. **Holt**. Look at the word "justification" there. That would include everybody who came over here to brief any one of us on any aspect of any program. Does that limit it?

Mrs. **Byron**. Excuse me. Mrs. Holt, under this amendment that I have proposed that would not be the case. Those individuals at the lower level echelon without the direct responsibility would not come—this amendment would eliminate them.

Mr. **Bateman**. Well, if I might reclaim my time, Mr. Chairman, and speak to that proposition. I am sympathetic with Mrs. Holt's point of view. I would urge, however, that if you got the bill as it comes from the subcommittee without this amendment or you have the choice of this amendment there is no question but what the amendment does at least significantly constrain the overbreadth of the bill.

For that reason I do support the amendment. I hope the committee will support it.

Mr. **Bennett**. Will the gentleman yield?

Mr. **Bateman**. Even those who are most zealous in their desire to see this problem dealt with—and I respect that point of view and I share in some measure that point of view—I think should see a merit here that if you do constrain the reach of the bill to those who most definitely ought to be impacted then you are going to have a more enforceable bill, a bill, a measure that is going to be susceptible to administration and to being implemented and enforced. And the broader it gets, the greater the enforcement and administration problem is going to be.

And I will be happy to yield to the distinguished chairman.

Mr. **Bennett**. Well, I do not really want to harbor too much on or harp too much on the basic thought that I had, and that is that I think it is a good bill as drafted and the amendment does not help it. But I did want to get you to yield because you fell prey to some of the siren type words of Mr. Cox.

He talks about all this paperwork. There is no additional paperwork required at all. None whatsoever. This is all a figment of his imagination. There is nothing in this law that requires paperwork at all. And so you ought not to fall in that trap.

That is all I wanted to add to it.

Mr. **Bateman**. Well, Mr. Chairman.

Mr. **Bennett**. There just is not any paperwork involved in it.

Mr. **Bateman**. Reclaiming my time and at grave risk of perhaps being in grievous error, I do disagree with the distinguished chairman. I think there is an enormous paperwork burden here on the individual as well as the contractor as well as on the Department of Defense who must monitor the careers of all of their employees having anything to do with the procurement process in order to know——

Mr. **Bennett**. That is not required.

Mr. **Bateman** [continuing]. Who is and is not covered.

Mr. **Bennett**. The law does not require that.

Mr. **Bateman**. And how they are covered and as to whom they are barred.

Mr. **Bennett**. Mr. Chairman, the law does not require that. He may want to require it but it is not in this, it is not in my proposal. You are not required to keep a lot of paperwork on anything. You are not required to create any paperwork. You are not required to keep any paperwork. It is a simple fact. If you dealt with a contractor on the other side of the table during the 2 years prior to your getting out of the service you cannot go to work for that contractor, not any other contractor, but just that contractor that you did that, concluded that contract with.

Now that is not really very complicated. And there is no, no requirement in this law that anybody keep any records on that, certainly not the Government. Now, the person might want to keep for his own information or the company would be required I guess to know when they hired somebody whether he worked for the Government and whether they had been involved. But the Government is not required to keep any paperwork on it at all.

The **Chairman**. Mr. Badham.

Mr. **Badham**. Thank you, Mr. Chairman.

Again as we discuss this bill, I first must say that I have the greatest of respect for the chairman, the offeror of this bill before us. I think that it is clear what he is trying to do. He is trying to eliminate bad practices and trying to preclude people from being greedy and dishonest. And I think that is certainly commendable.

In his statement he said, Mr. Chairman, there is clearly a public perception that the defense procurement process has been undermined by individuals who have moved from positions of responsibility in the Government to employ with private defense contractors. We are about to consider legislation based on public perception without any, not one scintilla of evidence that would indicate that the public perception is correct or even close to being factual.

Mr. **Bennett**. Well, I gave you an illustration, the Secretary of the Navy.

Mr. **Badham**. Further, further, the chairman has said in his statement the bill that I bring before the committee is still seen as having some imperfections by those on the subcommittee that held the hearings. That is evidence of the master of understatement. Certainly the bill is imperfection because it is impossible to make this sort of a bill perfect.

But I asked the question last week and I have still not had an answer that if the program manager for the B-1 program, who certainly had to have some expertise in the business world as well as the procurement world, were to go to General Electric and become a light bulb salesman he would be guilty of a crime against the people and the Government of the United States of America. And public perception notwithstanding to the contrary, I don't think that that is what we ought to be about. If anything, we have the responsibility in the Congress to manufacture a system that will work, not go on public perception to say that 473,000 employees of the Department of Defense are probably crooks.

And I think that is a terribly unfortunate direction for this committee, in which this committee might move—$10,000 and/or 1-year imprisonment.

Consider what we are doing. We are saying that a person that works for the Government, either in uniform or in civilian management at DOD, cannot leave that employment and do anything he knows how to do for 2 years, including selling light bulbs when he used to be in the engine procurement business. I really think that

that is way far afield and responding to public perception without one scintilla of evidence as to its factual veracity.

Mr. **Bennett**. Well, let me just quickly respond. Of course there is plenty of evidence. I don't like—I have only mentioned two names, but there are 2,000 identified cases of this already that the GAO has identified. So that it is not a thing that does not have any pertinence in reality. If you want to get all those names I can get you all the names. I just gave you two that were well known that had surfaced.

Now, as far as the thing about going to light bulb salesman for any employment that he might do in the future, it is kind of hard for me to see how this man we are trying to do this to in all this big contracting is going to screw light bulbs or something like that. But if he did, OK, well he took employment because——

Mr. **Badham**. Excuse me, Mr. Chairman, he is not screwing them, he is selling them.

Mr. **Bennett**. Well, selling them. I mean, whatever. In other words, he is not very likely to be a top flight contractor and turn over to go out to that contactor and go out and be in a contract or employment relationship with a big company like that. And I know it is very dramatic but you said an overstatement when you said some—you specifically overstated something.

Mr. **Badham**. Well, I——

Mr. **Bennett**. Well, I will tell you what it is, and that is much more important than light bulbs. You said he could not go out and pursue what he has done in ordinary life. He is only required not to be employed by that particular contracting company, only that company, and only then for 2 years after he has been in employment which he has been doing this up until the last two years.

Mr. **Badham**. But tell me——

Mr. **Bennett**. That is only that one company.

Mr. **Badham**. Tell me, Mr. Chairman, if you——

Mr. **Bennett**. There are thousands of such companies. There are thousands of procurers for the Federal Government. So he would just be procured from—kept from one particular company.

Mr. **Badham**. Tell me if you can, Mr. Chairman——

Mr. **Bennett**. Sir?

Mr. **Badham**. Tell me if you can, Mr. Chairman, why a procurement officer for GE jet engines, military jet engines, should not have the right to leave the Federal Government at the end of his term of service or on retirement and whatever and go to work for General Electric in the electrical division?

Mr. **Bennett**. All right. I will give you an honest answer. This is exactly how I feel about it. You may not like it. And you know, if you do not like it just do not vote for the bill when it comes up for a vote. We will pass it on the floor, in my opinion, probably in a much, to your standpoint, much worse way because it will get heavily amended. This will be heavily amended even if it came to the floor. And it will pass in that forum. But the guts of it is that there are in fact people who have done this, who have operated in billions of dollars in contracts and have gone out and taken employment with those people. And it is not that we say they have taken a bribe, but they have had such a serious conflict of interest that the public should be protected for that limited time of only 2 years for that one particular contractor.

Now, we are about 5 minutes off from the end of the vote up there so we probably better go. There is a vote on the floor.

The CHAIRMAN. What time did they start?

Mrs. BYRON. They have not rung the second bell yet.

The CHAIRMAN. We will go till the second bell.

Mr. Carney.

Mr. CARNEY. Thank you, Mr. Chairman. I would at this time like to offer an amendment to the amendment offered by the gentlelady from Maryland.

The amendment that I am offering as an amendment to the amendment is my original amendment minus the second part. Could we distribute that?

And I think——

Mr. BENNETT. Why don't we vote? Why don't we vote? Why don't we just vote on whatever we are going to vote on?

The CHAIRMAN. You want to vote?

Mrs. BYRON. Yes. Why don't we vote.

The CHAIRMAN. We've got an amendment to the amendment.

Mr. BENNETT. What is the amendment to the amendment? We'll vote on that.

The CHAIRMAN. Can you wait for the amendment to the amendment to another part of the bill? Why don't we vote on the——

Mrs. BYRON. Let's vote on what we have right now.

Mr. CARNEY. OK, fine. Fine. I will ask unanimous consent to withdraw my amendments.

The CHAIRMAN. All right. The vote occurs on the Byron amendment.

All in favor say aye.

[A chorus of ayes.]

The CHAIRMAN. Opposed.

[A chorus of noes.]

The CHAIRMAN. In the opinion of the Chair the ayes have it. The ayes have it. The motion is agreed to.

[Recess.]

The CHAIRMAN. We need to come to order. The gentleman from New York is recognized.

Mr. CARNEY. Thank you, Mr. Chairman. At this point, I would like to offer an amendment. I believe that it is being distributed now. I will read it to expedite matters. It says, "In section 2(a)(1) (page 1, line 11), insert after "with respect to a government contractor" the following: "While serving in a position identified by the Secretary of Defense under subsection (f)(1"."

It is conforming in nature. It allows the bill to conform with subsection (f)(1) which was just amended by Mrs. Byron.

The CHAIRMAN. You are saying that this is a technical amendment?

Mr. CARNEY. It is technical in nature, so that section (f)(1) conforms with the bill.

The CHAIRMAN. The gentleman from Florida.

Mr. BENNETT. It is technically very injurious to the bill. It gives teeth to what has already been perfected by Mrs. Byron. Mrs. Byron put a list in the bill of various jobs. This would say that no longer would the criteria of the bill be whether a person did something which is defined as criminal under the statute. But now if he were on a list, if you identified him as being on a list, he would be subject to being a person that could be found as a criminal if he did certain things.

The bill simply says that if a person negotiates for the Government on one side of the table with the contractor on the other side of the table within 2 years prior to his leaving the service, that he cannot turn around and work for that contractor thereafter. A person is defined as somebody who has a substantial ability and action in bringing about that contract.

This amendment would change the whole nature of the bill. It has already been pretty well semiemasculated by the Spence amendment. This I think would bring about a real change of gender. This would really change the nature of the bill, and just adds to the problem by saying that the only people on the list are people who could be found guilty. That is an absurd way to write a criminal law.

Mr. HUNTER. Would the gentleman yield?

Mr. BENNETT. Yes.

Mr. HUNTER. I am trying to understand what Mr. Carney's amendment would do and how it would affect the bill. Let us say that you have a list of identified people under the Byron amendment and one of them is a program manager. What this would say is if you were a Government employee and you looked at the list and program manager is one of them, you were something else, that you could not then be prosecuted if Carney passed. But that possibly and conceivably if Carney did not pass, that you could have another position which the Secretary did not define, and yet you could still be criminally liable.

In other words, you could look at the list and you are on or not, but that you could still be criminally prosecuted. Am I fairly stating that? Because I am trying to understand exactly what is being done.

Mr. BENNETT. As I understand Mr. Carney's amendment, it is that instead of making a man criminally liable for doing this very simple thing that I have defined several times here today, that in addition to that he had to be on a list of names. And of course, that list could be changed administratively. The definition of it could be changed. You could have a specific type of title that you give which would not be covered.

So administratively, we are turning over to the executive branch of the Government the right to pick out who can be tried for a crime. Not because of the merits or the demerits of the action, but because they are on a list that is gotten up by the executive branch, which I think is a horrible way to approach criminal law.

I doubt that it could be upheld constitutionally. Of course, those of you, and I am not saying you, but those people, let me put it that way, those people who do not want an effective law might well want this provision, because it probably would make it unconstitutional.

The CHAIRMAN. Let me ask Mr. Carney.

Is the purpose of what you are trying to do is to make the law, the applicability of the law, to make sure that we do not cover people other than those thereby certified in the bill; so that what you are saying is that somebody later after they have left Government might find themselves prosecuted under this law without knowing it at the time that they were working in the Government, is that the point?

Mr. CARNEY. I think that the chairman brings out a good point. This would help establish the question of notice that has been brought up time and time again. What it does though in essence is that it conforms section (f) of covered positions as amended by the gentlelady from Maryland.

It simply says on line 11, for those who would like to follow the bill, it adds, "while serving in a position identified by the Secretary of Defense under subsection (f)(1)," which is covered positions as amended by Mrs. Byron.

Mr. SPRATT. Would the gentleman yield?

Mr. CARNEY. I would be glad to yield to the gentleman.

Mr. SPRATT. Is not this amendment in fact necessitated by the Byron amendment? The Byron amendment is dangling in the bill until we identify.

Mr. CARNEY. That is correct. We identify positions, and now we bring the term positions in. In fact, it might be best for me to yield to staff. Bob, if you would. Mr. Spratt asked the question.

Mr. SCHAFER. Yes.

Mr. SPRATT. Bob, my question is just this.

Does not this amendment follow almost as a technical conforming amendment after having adopted the Byron amendment?

Mr. SCHAFER. It specifically provides a linkage to the Byron amendment, and it links the Byron amendment to the specific limitation that is contained in the bill. That is, what it says is that the limitations on the acceptance of compensation, which is the key of this bill, applies only to individuals occupying a position that is on the list that would be created under the Byron amendment.

Mr. BENNETT. Could I be recognized for just a minute to follow up on that?

The CHAIRMAN. Yes.

Mr. BENNETT. First of all, I want to disabuse anybody of the original remarks of Mr. Carney. He did not mislead anybody. But in response to Mr. Aspin's question about somebody who discovered later that they might be covered, there is no problem about that at all. That is handled in another section of this bill. In fact, they are given 90 days, if I remember correctly, under the bill to get out from under. So there is no problem about that at all. It has no relevance to this bill at all.

But the other part about it; yes, it does give teeth to a mouth that was otherwise without teeth to the destruction of this bill. In other words, it is true that the list of Mrs. Byron's serves only one purpose standing by itself, and that is to identify to people the general areas of the type of activity involved.

They were already well-defined in the bill before that, already well-defined. So there is no need for Mrs. Byron's amendment. I opposed Mrs. Byron's amendment, but Mrs. Byron's amendment did not withdraw a lot of people out of the bill in an arbitrary fashion that this amendment of Mr. Carney's will.

It is very arbitrary, because the executive branch will now have charge of whoever and whichever people they want to have chargeable under criminal law. And an executive branch should never have that power. As a matter of fact, my guess is that it would be unconstitutional.

The CHAIRMAN. Are there other comments?

Mr. SPRATT. Mr. Chairman.

The CHAIRMAN. Mr. Spratt.

Mr. SPRATT. It seems to me that we either have to adopt this amendment or we have got to go back and rewrite section (2)(a) somehow, so that we can integrate the Byron amendment into the provisions of the act.

Mr. CARNEY. No, not really.

Mr. BENNETT. I agreed to that language. In other words, in the committee, I had no objection to Mrs. Byron's language, in subcommittee. In this committee, I did oppose it, because I thought that Mr. Carney would be coming forth with something else. But in that committee, I did not oppose that standing alone, because it has a slight value. It has a value of letting people know in addition to the other definitions of the bill the probable fact that you might be involved.

So it is not a meaningless thing, it is not useless. It is just not very valuable.

Mr. SPRATT. My point is this. If you read the Byron amendment, the caption line is Covered Positions. And it goes on to say that, "The Secretary shall publish those positions that are covered by the act."

Now that would lead me reading the act to infer that these are the covered positions.

Mr. BENNETT. That is a good reason to get rid of Mrs. Byron's amendment.

Mr. SPRATT. But we have not gotten rid of it. We have adopted it. Now it is part of the act.

Mr. CARNEY. If the gentleman would yield.

Mr. SPRATT. I would yield to Mr. Carney.

Mr. CARNEY. I believe that the gentleman hit the nail right on the head. If you want Mrs. Byron's amendment, the gentlewoman from Maryland's amendment, you have to get this conforming amendment to accomplish what we have just voted on.

Mr. Bennett is 100 percent correct. This will solidify Mrs. Byron's amendment. So I would think that what we could do is move the previous question. And those that voted for Mrs. Byron if they want it, they will have to vote for this amendment.

Mr. SPRATT. Reclaiming my time, even though the light is out. Mr. Chairman, if I could have just 1 more minute. There is a second choice. And that is to describe some sort of generic residual class that is not a specified covered position. We could rewrite some provision of the bill to say, "The Secretary shall designate the people who hold these specific positions; development, production, source selection boards," and so forth, "and in addition, there shall be a residual class of people who have significant procurement functions."

We could do that. But either way, we have to redraft this bill to accommodate an amendment that we have just adopted. And I would go with the amendment of Mr. Carney.

Mr. **Bennett**. Just for a minute. I understand how you feel about it. And if the committee does not feel the same way about it, it is perfectly all right. That is everybody's right. But I do want to say this. That if you allow this language of Mr. Carney to come on to this bill, then all the Secretary of the Navy has to do if he wants really to get a particular kind of contract handled and he does not want to go into the details, he can get a PR man, a liaison man, or a good man playing golf or what have you, to really conclude the contract, and then somebody else really sign it up.

So that guy will not be covered. A PR man or a liaison man is not going to be covered. So he does all of the work about having this contract effected, and then somebody else signs it. Now that is what you are opening up here.

The bill as it is, as it came from the subcommittee with the exception of the Spence amendment, was a clear-cut easy thing. You have got to bear in mind that this bill deals with an act, a very simple act. It is an act of taking employment from a contractor that you have previously dealt with on the other side of the table within 2 years. That is all there is to it.

And you are adding to it a way in which the administration can escape that responsibility on the part of that person. It is violative of everything that I know about criminal law to allow the administration to make such a decision. And I think that it would be unconstitutional if you ever passed it in that form. Aside from that, there is the meritorious thing of whether you want to do that or not. Whether you want to leave it up to the administration to pick the people it wants to say that can be subject to this penalty. They can pick people that they do not particularly care about, or they can arrange that all of the real contracting be done by somebody that is not on this list who is actually just a liaison officer, or even a cook, or a sweeper-upper if he is sufficiently competent.

He would be very valuable to people who wanted to evade this sort of an operation. I mean he could be given a very menial job or could be given a very meaningless job, and at the same time be given the actual contracting opportunity. This bill was a good tight bill before we started improving it.

The **Chairman**. Are there any other comments?

[No response.]

The **Chairman**. All right. The issue is on the Carney amendment.

All in favor of the Carney amendment, say aye.

[A chorus of ayes.]

The **Chairman**. Opposed.

[A chorus of nays.]

The **Chairman**. In the opinion of the Chair, the ayes have it. The ayes have it. The motion is agreed to.

Who else has amendments? Let us just get a sense of who else has amendments that we are dealing with. Mr. Carney, Mr. Kasich, Mr. Hunter. All right, Mr. Kasich.

Mr. **Kasich**. Mr. Chairman, the amendment should be passed out. Let me tell you why I offer the amendment. There were a number of us who got together to discuss the bill. And what I attempted to do, let me tell you what I am concerned about.

When Mr. Spence's amendment was accepted in total wiping out Mr. Bennett's provision, I think that there ought to be a provision in the law that gives people an exemption. Let me tell you what I am concerned about. Mr. Bennett raises the issue that there we are trying to get at the individuals who are at the upper level, who could in fact have influence and do the things that we do not want to see done.

Mr. Spence says that there are people who we want to have in the Defense Department that we could not get, or that we could not fill the position because nobody wants to take that position. And because that individual has to deal with six or seven different contractors, therefore we have got to provide an exemption.

Well, what we did under the Spence amendment was to exempt permanently in the law the ability for the Secretary, for example, to exempt from there to eternity a position of Assistant Secretary. Even if under the Reagan administration that we could not get an Assistant Secretary for Shipbuilding, but under the next administration we could get an Assistant Secretary of Shipbuilding, that person under the next administration would be exempted, would not have to comply with the law, because what we do is exempt positions under the Spence amendment.

What I would like to do is to exempt individuals. So that if we are trying to fill the Assistant Secretary for Shipbuilding and we cannot seem to find anybody because of the provisions in the law, we let the Secretary of Defense say we cannot fill this position, this is the person we want to fill it with, we want this person to be exempted and these are the reasons why, and the Ethics Commission agrees with us, and it is done more on an individual basis rather than on a blanket case for all of these positions ad infinitum.

And what it really is is an attempt to draw a middle ground between where Mr. Bennett is and where Mr. Spence is recognizing the fact that we should have some latitude in the Secretary of Defense, but also recognizing that we do not want to exempt all of the upper level positions from now until eternity, because in most cases we probably could fill them with people who will comply with the law, and that is what it is an attempt to do. And I offer the amendment.

Mr. BENNETT. I will briefly address this. There are two things that disturb me about this. Again this is picking out individuals. This is not the nature of criminal law. You define a crime, and then you see whether it fits the individual. This would allow a waiver which I think is a bad thing to do.

The second thing about it is, you know, to have the Director of Government Ethics in this. What is the function of the Director of Government Ethics? Well, he is going to look at the statute. And the statute says that if it seriously hampers the ability of the Department of Defense to obtain the services of a qualified individual, then I guess as Director of the Office of Government Ethics that it is supposed to under this statute give in.

There is no other ethical thing involved, and it is set out in the statute what the criteria is. He has no particular knowledge whether it is essential to get this particular person or whether he is highly qualified.

So I think that you were putting an impossible burden upon the Office of Government Ethics, and you give him an unethical function. I hate to think about the head of the ethical group in the U.S. Government given an unethical responsibility by statute. That is kind of a dumb thing to do.

But my real objection is not that. My real objection to it is that again you are dealing with individuals, people picking out individuals, and that is not the way that criminal laws ought to be done. When a person does what this statute was originally set out to do is, of course, it's been changed quite a bit now, and I think it will be changed again on the floor, I hope, but it originally was to say that just a person couldn't do what we defined before, is couldn't go to work for an employer that he'd been previously acting on the other side of the table from.

Now, this says that some people can escape it because of the difficulty of getting people in those particular positions.

One other remark I'd like to make, you all are so worried about having competent people in these positions. I've been a chairman of the Seapower Subcommittee. Now, I don't know; 20 years, or something like that, maybe 25. Anyway, whatever it is, I've been all that time, and you really think they're all that competent. I think if I had any feeling they were all that competent I sure would have lost it with regard to General Dynamics. When they told me—now, I haven't practiced law in 37 years, but when they told me that in the 500-page contract they have with General Dynamics that there was a litigatable question about whether or not the Federal Government was the insurer against shoddy workmanship on the part of General Dynamics. Shoddy workmanship. Improprieties on the part of the employees of General Dynamics and that was not even in the contract.

So, how wonderful are they? They are a disaster. I think that's one of the problems we've got now. We don't have all these qualified people. Maybe if you started picking people that had a higher level of ethical standards you'd have more competent people, and I think that at least we'd have ethical people. And I just don't really believe they're all that good.

Mr. **Kasich**. Will the gentleman——

The **Chairman**. Mr. Kasich.

Mr. **Kasich**. Let me just—I'm glad that Mr. Bennett in many respects is not with the Contras because all we gave them is humanitarian aid. He might get mad and reject that. But what I'm trying to do, Mr. Bennett, really is to try to strike a middle ground, and trying to say that in some cases they ought to be exempted, and others they ought not to, rather than exempting categories, individuals, and that sums it up.

The **Chairman**. Is that—one argument that comes to mind is if you have a lawyer who might be appointed to an Assistant Secretary, and he could go back to working in a law firm, you would not want to exempt him. There's no problem with that. But a person who does have to go back to an aerospace firm, that's a different story.

Mr. KASICH. That's exactly right. It's an attempt to deal with it case by case.

The CHAIRMAN. Any other comment? Any other move to the previous question?

All in favor of the Kasich amendment say aye.

[A chorus of noes.]

The CHAIRMAN. Opposed.

[A chorus of nos.]

The CHAIRMAN. The opinion of the Chair the ayes have it. The ayes have it. The amendment is agreed to.

Mr. Hunter has an amendment.

Mr. HUNTER. Mr. Chairman, I have an amendment that goes to a very basic element of our law, and I think would do—provide a service for the people who are going to be affected by this law, that otherwise is not going to be provided. It goes to notice, and what it simply says, and is being passed out now, is that those people—and, incidentally I appreciate the chairman allowing me to bring this amendment up in the subcommittee yesterday, have it fully considered by the subcommittee, acted on by the subcommittee. I'm reoffering it here, and let me say simply that there are several very basic rights in this country, and I would say the right to employment is only second probably to the right to property ownership. It's precious to us. We have a lot of very fine people working for the Federal Government. And if we are going to make a crime out of what otherwise would be an innocuous act. That is, seeking employment.

We need to give them notice. And what this does is very simply requires that these people in this position, and these would be positions that were defined under the Byron amendment. For example, if a guy is a program manager, if he's in a certain development position with regard to a contract, then that person upon terminating his employment with the Federal Government is given by his employer, by the Federal Government, a notice that very simply tells him "listen, if you go to work for certain individuals you are going to be subject to criminal prosecution," and these are the companies that we have—that we have on your record that you have had this particular contact with over the last 2 years.

So with regard to a guy like Admiral Hostetler, for example, you'd have essentially the notice, and you'd have companies that you are prescribed from working for. One, General Dynamics. You can't go to work for them. And it would say you can't go to work for them until July 1, 1989, or whatever.

So it very prescisely gives notice to the individuals who are concerned and tells them what companies they can't go to work for.

Now, I've spoken with Mr. Schafer, and I wanted Mr. Schafer to tell us briefly there was concern in the subcommittee that this would result in every man and woman in the armed services being—having to have their records researched ad nauseam to find out if they ever did any contract work. I think that the research that the staff has done has indicated that would not be the case. It would be limited to a very few individuals. There would be a record kept of the companies that they dealt with in this particular positions that were outlined in the Byron amendment, and they would be told "you can't go to work for General Electric until July 1, 1989, and that's that."

And, again, if you're really talking about prosecuting individuals, it would be much easier if you want to prosecute the people who are culpable to be able to walk into court with this particular notice it would have served on the employee when they terminated service with the Federal Government, we said you couldn't go to work for General Dynamics until this particular date, and you did go to work for them within 1 year. You did receive a notice.

So I think it would take care of another problem that you would have, and that is a tremendous amount of resources going to requested opinions by people who have proposed workplaces in the private sector in mind.

So with that I would ask Mr. Schafer to comment briefly on whether or not this would involve reams of paperwork, or whether it would be fairly simple to give this notice to individuals?

Mr. **Schafer**. The question occurred as to how many individuals, how many cases might really occur within a year's period, and the bill as now amended applies only to individuals serving in a covered position. That's a matter which will be of record, and while we don't have an exact number, it's probably on the order of 100,000 or less as it's currently drafted.

It also then would only apply at any period to people whose employment terminates in that period, and since the concept is individuals with significant responsibilities we are in general dealing with civilians, or officers in the military, people for whom turnover is not all that great—it's not like, for example, people coming in as enlisted people in the service for which there are very large numbers of people entering and leaving in each year. And while we don't, as I said, have an exact estimate from the Department, it appears just kind of working through that rationale that we're dealing on the order of thousands, or perhaps 10,000 people in a year's period, and it's specifically people who are on a list as the bill is now envisioned.

And so I think we have a reasonable kind of order of magnitude estimate about the numbers involved.

Mr. **Hunter**. I yield to my friend.

Mr. **Hertel**. Well, you know, I can understand what the gentleman is after and the last gentleman is after, and the gentlelady before them, but, yes, the chairman then pointed out there is no paperwork in the bill as it stands, and the last two amendments at least are adding paperwork. Mr. Kasich, every time the Secretary grants an exemption he's got to send reports, OK. Yours are going to have people checking on the records and so forth. You're adding paperwork to it which is, you know, some of the other opponents of the bill were saying that before, that the original bill would have paperwork. It didn't. Now it's going to. If we keep adding these amendments on it will be all caught up in DOD. The law is very simple, and everybody is on notice of the law. The armed services could easily publish the law, and it will be in all the publications. And if somebody has a doubt as to what they did in the last 2 years of their career, if they can't remember, they can make an inquiry themselves. I just don't think we should have DOD do all this extra work, services do all this extra work in so many different ways. I think these people are intelligent enough, and they could ask the questions if they're in doubt.

Mr. HUNTER. Let me just answer my friend very briefly. If we're going to make it a crime, to take an analogy, for Bob Schafer to go to work for General Dynamics, for example, the least that we would owe him is a notice that he can't go to work for them, and that, No. 2, it's going to be a criminal penalty if he does.

The second point that I would make to my friend is this notice would be a very effective prosecutorial tool because otherwise you're going to have—you know, I come from a city that has almost 5,000 lawyers, and I can assure the gentleman that the word significant—significant responsibilities is going to pay a great many attorney fees in the decision of the question of fact as to whether or not this applies to different cases.

If you can walk in and say you were served——

Mr. DICKINSON. Are you a lawyer?

Mr. HUNTER. Yes, I am a lawyer. And it's a great profession. I'm a counselor.

So my answer to my friend is very simply that it does not render the bill less effective. It's going to render it more effective. It's going to provide a very simple service to the people who serve this country, and that is notice that says warning, you better make darn sure you don't go to work for these companies in the next 2 years.

I don't see how that—why it's unreasonable to give them that notice.

Mr. HERTEL. Well, since the sponsor is an attorney then he understands what the chairman was saying. That is, that in regards to criminal law we don't have to give, and we don't regularly give notice. We just put the statute on the books. We pass many statutes.

This Congress just passed a uniform crime revision code the last year and we're not going to notify every citizen, send them a copy of every single change we made in the law. That would be nice. That would be fair. That would be difficult and expensive, and this is no different than any other criminal law.

In fact, people are going to have more notice of this through publication and through talk about it in their professions than most other criminal law changes this Congress makes.

Mr. HUNTER. I agree with my friend except for this point. This isn't burglary. It's not robbery. It's putting food on the table of your family, and that's something that otherwise would be a quite innocuous endeavor. And there is a provision in law, or there is a philosophy in law, that if you're doing something that otherwise would not be a criminal thing, that isn't something that involves moral culpability, you try to give the best notice possible.

And what this would do is lay out in black and white for people that they can't accept a contract with General Dynamics until July 1, 1989. Don't do it. And families would be able to sit down and work out their career paths and decide what they're going to do without having to go down to the family lawyer.

Mr. MCCLOSKEY. Would the gentleman yield?

Mr. HUNTER. I'd be happy to yield to the gentleman.

Mr. McCloskey. I'd just like to commend the gentleman for his amendment. I agree wholeheartedly with everything he said. I think it's simple. I think it's straightforward. It's clean. It puts people on notice, and indeed would help in the prosecutorial function. And we are dealing with a very specific class of people, not everyone in the Nation.

Mr. Hunter. I thank the gentleman.

The Chairman. Mr. Spratt.

Mr. Spratt. One further question. I commend the gentleman also. I think in making this statute more specific in giving notice effected by it, we are enhancing its constitutionality and its effectiveness. But for the record, is this exculpatory if notice is not given as to a particular contractor by error or by inadvertence? Does that exonerate the former employee of DOD, or the former officer from not going to——

Mr. Hunter. Yes; if you read the first—the notice is required. In other words, if you read the first—the first provision, it says that the end of subsection such and such, strike out the period, and insert in lieu thereof, if that contractor is included in the notice provided that individual under subsection D.

So, yes, the notice—if you're going to make it a crime for Bob Schafer to go to work for GD, you're going to have to tell him about it before you do it, yes.

Mr. Spratt. Would the gentleman yield?

Mr. Hutto. Will the gentleman yield?

Mr. Hunter. I'd be happy to yield.

Mr. Hutto. My brother lawyer could suggest why not require a notice to be posted on the bulletin board of every office that deals in any way with procurement.

Mr. Hunter. Well, that would be—that's something that we could certainly do, but with regard to each individual, let's say you're Admiral Hostettler and you're the program manager for the cruise missile, your notice is going to say you can't go to work for General Dynamics until, and it's going to have the date, that would be 24 months from the time of termination with your employer.

So the point is each person is going to have to have a notice that basically lays out 24 months from the date of his termination.

Mr. Hutto. If the gentleman would further yield, surely we have people that are intelligent enough working in these positions that if they read the law and have that notice that they're going to know they can't go to work there.

Mr. Hunter. Well, I agree with the gentleman except for this point. You're going to have meetings when people come in when they are put in some of these positions for every brief periods of time, when they have brief meetings. I put a question to counsel last time. I said if a—if you had under the definition of significant responsibility if a person was called in who was an Under Secretary on a project and he was asked to make a statement as to whether or not the Racer system would fit in the first DDG–51, for example, and he said yes, I think it's a good system, would he then be excluded from employment with that employer, our counsel said "I'm not sure. That's a question of fact."

So the point is rather than have to have Bob Schafer go back and say, "Gee, was that meeting in the anteroom? Did that disqualify me from working with this employer?" He's going to have a list he can rely on. And I think notice and reliance on that notice are essential parts of this.

Mr. Hutto. But who would determine if this one comment—I mean, has that been decided yet if he would be covered under this law?

Mr. Hunter. Well, the whole point that was made by our people is that that's going to be determined differently in different courtrooms. In other words, somebody might say well this particular meeting amounted to having significant responsibilities in this procurement, and this meeting didn't.

So the point is this gives—this makes it definite where service families can sit down and plan their career path and say "Doggone it, I can't go to work for General Dynamics for the next 2 years. This is a date I'm basically out of this situation and let's go from there."

The Chairman. Any other comments? Let's vote.

All right, all in favor with the Hunter amendment say aye.

[A chorus of ayes.]

The Chairman. Opposed.

[A chorus of noes.]

The Chairman. The ayes have it. The Hunter amendment is agreed to.

Any other amendments? I hope not.

Mr. Carney. Well, my chairman is such a dynamic leader I will not offer my next two amendments.

The Chairman All right. Vote on the final passage of the—vote on the final passage of the Bennett amendment—the Bennett bill as amended. All in favor say aye.

[A chorus of ayes.]

The Chairman. Opposed.

[No response.]

The Chairman The ayes have it by almost unanimous——

[The committee proceeded to the consideration of other business.]

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